THE

ADMINISTRATION OF JUSTICE

IN

BRITISH INDIA;

ITS PAST HISTORY AND PRESENT STATE:

COMPRISING AN

ACCOUNT OF THE LAWS PECULIAR TO INDIA.

BY

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PREFACE.

THE recent disastrous events in India have awakened in the public mind a lively, though somewhat tardy, interest in the affairs of that country, and ere long the whole subject of our Indian Government will be discussed in Parliament. Perhaps no branch of the system for governing any country is more important than that which provides for the Administration of Justice—with regard to British India there is, *certainly, not one:* at the same time it may safely be asserted that no department is less generally understood—I might almost say more universally misunderstood—in England than that relating to the manner in which the Laws have been framed and administered since we took upon ourselves to stand forth as the Ruling Power in India. Every work, tending to afford information on the subject, must therefore be productive of benefit. For several years past I have devoted much of my time, both professionally and as an Orientalist, to the study of the Law of India; and, in the years 1849, '51, and '52, I published an Analytical Digest of the decisions of the Courts in India, and of the Judicial Committee of the Privy Council, to which it is unnecessary to allude more particularly in this place. To this Digest I prefixed an Introduction, which was a separate treatise in itself, on the history and then actual state of the Administration of Justice in our Indian territories. It has lately occurred to me that the publication of a new edition of this Introduction, in a somewhat modified form,

with additions, making it applicable to the present day, might be of use to those who will have to take a part in the approaching discussion, and be at the same time of interest to the public at large; and I accordingly applied myself to the task. The following pages are for the most part a reprint of the Introduction to which I have alluded; but I have somewhat altered the original arrangement, and have spared no pains in endeavouring to make my present work as complete as possible, and to render it a plain and perspicuous account of the past and actual Judicial systems, and of the Laws as administered in India, from the time of Clive to the year 1858. It is to be hoped that all parties will approach the great India-question calmly and dispassionately. It ought not to be a party-question at all—still less ought that portion of it which relates to "Justice" be affected in the smallest degree by party feeling. It is in this spirit that I have tried to write. My work pretends to be nothing more than a mere chronicle—a mere record of Facts—but Facts which should be known to all who wish to ameliorate the condition of our Indian fellow-subjects. I will say yet more—Facts which ought to be, *must* be, studied and understood by those who have to legislate for India, if India is to be preserved to Great Britain for the mutual advantage of both countries. I have abstained from any comment upon the various measures proposed or adopted; except in some very few instances where my own strong conviction has induced me to express opinions which may perhaps be entitled to some weight with those who have not considered the subjects involved so attentively as I have done. I had at first intended to make this treatise more popular, by omitting many of the details, especially in those portions of it which treat of the

laws peculiar to India, and the bibliography of such laws; but as I have been advised by the most competent persons that my work, in its present form, may possibly be of permanent utility as well as of casual importance, I have, in pursuance of their advice, retained and even added to the details, the omission of which I had originally contemplated. I was the more easily induced to adopt this plan, since the account I have given of the Native Laws, and the bibliographical portions, are the result of the reading of many years; and, so far as I know, there nowhere exists so ample a direction to the student, pointing out the works by which a knowledge of the Laws peculiar to India can be acquired. The comparatively superficial reader, who may wish merely to gain a practical acquaintance with the judicial systems of British India, can pass over these details altogether, and will, I trust, forgive me for their insertion. In writing on a subject of such paramount importance, it should always be remembered, that it is very easy to say too little; very difficult to say enough; but almost impossible to say too much, if all that be said can be vouched for as true.

W. H. M.

25th March, 1858.

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INTRODUCTION.

In order thoroughly to understand and appreciate the present system for the Administration of Justice in India, and before we can hope to improve upon it, it is obviously necessary to inquire into the history of such system, and the nature of the laws administered by the several Courts.

Scarcely any one of the many intricate subjects connected with our Government of India, offers so many difficulties as the study of the law, as administered in that country.

The laws themselves are so diverse and complicated in their nature, and are spread over such a multitude of volumes, that a long course of laborious investigation and patient study becomes requisite, before the student can see his way through the mass of legislation, which must appear to all, at the outset, an impenetrable chaos.

It is true that the Regulations and the Acts of the Legislative Council of India have been printed and published, and that various treatises on native law, both by European authors and in translations from the works of Hindú and Muhammadan lawyers, have appeared at different times. The Regulations, however, are frequently vague, and not easily to be construed, and from their voluminousness, and the manner in

which they are framed, are always difficult of reference; whilst, with regard to the native laws, a difficulty arises, on the other hand, from the paucity of the materials, and still greater obstacles present themselves on the ground of obscurity. The works on native law by European writers are unfortunately few in number; and those translated from the original languages, though more numerous, are, from their nature, not calculated to be of much assistance to a beginner: the latter class treat of the doctrines of different schools, in many instances totally opposed to each other, without adverting to the distinction; they abound with subtleties of reasoning supporting contradictory interpretations of the texts of the ancient lawgivers; and they are in every case couched in terms difficult to be understood, unless after a long acquaintance with the method pursued by the Indian jurists in treating of legal subjects, and some preliminary knowledge of those religious systems with which the laws are intimately connected, and of which, in fact, they form an integral part.

Elementary and practical works on the Law of India are almost entirely wanting. Nearly all the European authors who have written on the subject have principally devoted their attention to theories: each writer dilating upon the course which he conceives ought to be pursued in legislating for India, and neglecting to describe the judicial system which has been adopted and the laws as they now exist.

In the following pages I have endeavoured to supply to some extent this defect, and to set before the reader a concise but comprehensive treatise on the past and present systems for the administration of justice in British India, together with some account of the laws peculiar to that country, as well as of the works from which a knowledge of them may be acquired.

The diversity of the Courts and of the laws themselves, renders it necessary to divide the subject matter of this treatise into several distinct chapters and sections. These will comprise the history of the several Courts of Judicature and

of the judicial systems from their origin down to the present time, and a detailed account of the actual constitution of the Courts, and their powers and jurisdiction, as they now exist. The subject of appeals to England, and the laws peculiar to India will also be treated historically; and in my account of the latter I shall describe, at the risk of prolixity, at some length the sources whence the native laws are derived, and the works from which a knowledge of them may be most readily attained. I shall conclude by enumerating the different collections of reports of decided cases, which now exist in considerable numbers, and which constitute a class of works of the highest value for the ascertainment of the actual practice and doctrines of the Courts in India.

Before entering upon the particular description of the Courts and Laws it will be as well to premise that the inhabitants of India may, for judicial purposes, be classed into:—

1. British-European subjects and their legitimate descendants.

2. Hindús.

3. Muhammadans.

4. Other proper natives of Asia, being neither Hindús, Muhammadans, nor Christians.

5. Portuguese, Armenian, and other Christians, of native or foreign extraction, together with half-casts, or illegitimate children of British subjects by native mothers.

The Courts in which civil and criminal justice are administered to these several classes are of two distinct descriptions, viz.—

1. The Courts established under, and by, the Statutes and Charters of Justice granted by Royal authority, and which are presided over by Judges appointed by Her Majesty. These are commonly called the Queen's Courts. To these may be added Justices of the Peace, Magistrates, and Coroners.

2. The Courts established by the authority of, and presided over by Judges appointed by the Honourable East-India Com-

pany, and which are usually denominated the Sudder and Mofussil Courts, the Company's Courts, or the Courts for the Provinces. The Judges of these Courts are of two orders, covenanted and uncovenanted.

CHAPTER I.

HER MAJESTYS COURTS OF JUDICATURE.

1. The Supreme Courts of Judicature.

(1) History of the Supreme Courts, their Powers and Jurisdiction.

The earliest power emanating from the Crown for the administration of justice in India dates as far back as the reign of James I., who, by Charter granted in the year 1622, authorised the old East-India Company to chastise and correct all English persons residing in the East Indies, and committing any misdemeanour, either with martial law or otherwise.

The first authority, however, for the introduction of British law in India was granted by Charles II., who, by Royal Charter dated the 3rd of April 1661, gave to the Governor and Council of the several places belonging to the Company in the East Indies power "to judge all persons belonging to the said Governor and Company, or that should live under them in all causes whether civil or criminal, according to the laws of the kingdom, and to execute judgment accordingly." And in the subsequent grants to the Company of the islands of Bombay and St. Helena, in the year 1669 and 1674, the Company were empowered to make laws and constitutions for the good government of the islands and their inhabitants; and to impose punishments and penalties, extending to the taking away life or member when the quality of the offence should require it, so that the punishment and penalties were consonant to reason, and not repugnant to, but as near as might be agree-

able to the laws of England. The Governor and Company, or Governor and Committees of the Company, were also authorised to appoint Governors and other agents for the said islands, to be invested with a power of ruling, correcting, and punishing his Majesty's subjects in the said islands, according to justice, by Courts, Sessions, and other forms of judicature, like those established in England, by such Judges and officers as should be delegated for that purpose.

An amended Charter was granted by Charles II. to the Company on the 9th of August 1683, which empowered the Governor and Council to establish Courts of Judicature at such places as they might appoint, to consist of one person learned in the civil laws, and two merchants, and to decide according to equity and good conscience, and according to the laws and customs of merchants.

These provisions were continued in the Charter granted by James II. in 1686; and a similar power was given to the new East-India Company by the Charter of the 10th William III., granted in Sept. 1698.

In the year 1726 the Court of Directors of the United Company[1] represented by petition to King George the First—"That there was great want at Madras, Fort William, and Bombay, of a proper and competent power and authority for the more speedy and effectual administering of justice in civil causes, and for the trying and punishing of capital and other criminal offences and misdemeanours." Accordingly, the then existing Courts were superseded, and the East-India Company were empowered by Royal Charter, granted in 1726 the 13th year of the reign of King George I., to establish at each of the three settlements a Court, consisting of a Mayor and nine Aldermen, to be a Court of Record, and to try, hear, and determine all civil suits, actions, and pleas between party and

[1] The union of the old or London, and the new or English Companies was effected by the "Charter of Union" of 1702, and was completed under the award of the Lord High Treasurer, Lord Godolphin, in 1708. On the 25th March, 1709, the first General Court of the United Company was held.

party. From these Courts an appeal lay to the Governors and Councils, and thence to the King in Council, in causes involving sums above the amount of 1000 pagodas.[1] This same Charter also constituted Courts of Oyer and Terminer at each settlement, consisting of the Governors and Councils, for the trial of all offences, except high treason, committed within the towns of Madras, Bombay, and Calcutta, or within any of the Factories subordinate thereto, or within ten miles of the same; and the Governors and Councils were constituted Justices of the Peace, and were authorised to hold Quarter Sessions. Under this Charter all the common and statute law at that time extant in England was introduced into the Indian Presidencies.[2]

The Mayor's Court, which had been established at Madras, was abolished on the capture of that place by the French under Labourdonnais in the year 1746; but the town having been restored to the English in 1749 by the treaty of Aix-la-Chapelle, the Directors of the East-India Company represented to the King in Council that "it would be a great encouragement to persons to come and settle at that place, if a proper and competent judicial authority were established there;" and further, that it had been found by experience that there were some defects in the Charter of 1726.

Under these circumstances, King George II. granted a new Charter in the year 1753, re-establishing the Mayors' Courts at Madras, Bombay, and Calcutta, with some not very material alterations. By this Charter these Courts were limited in

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[1] This is the earliest use of the word *pagoda*, applied as a designation of value in money out of the limits of Madras. It afterwards found its way into the Bengal Charter of Justice, although the pagoda is a Madras coin, and was never at any time current in Bengal. The value of the pagoda is about eight shillings English money. The amount appealable to the Sovereign in Council has been altered, and fixed at the sum of 10,000 Company's rupees for all the Courts in India, by the order in Council of the 10th of April 1838.

[2] Clarke's Rules and Orders of the Supreme Court of Judicature at Fort William in Bengal, Pref. p. iv. 8vo. Calc. 1829.

their civil jurisdiction to suits between persons not Natives of the said several towns; and suits between Natives were directed not to be entertained by the Mayors' Courts, unless by consent of the parties. The jurisdiction of the Government Courts in criminal cases was also limited to offences committed within the several towns and the Factories or places subordinate thereto, omitting the words, "or within ten miles of the same," contained in the previous Charter. At the same time, and by the same Charter, Courts of Requests were established at Madras, Bombay, and Fort William, for the determination of suits involving small pecuniary amounts. These last Courts will be treated of separately.

The Seventh Report of the Committee of Secrecy, appointed to inquire into the state of the East-India Company, after a detailed description of the Courts of Judicature in Bengal, observes upon the constitution and defects of the Mayors' Court, and remarks, "that although it is bound to judge, at least where Europeans are concerned, according to the laws of England, yet the Judges are not required to be, and in fact have never been, persons educated in the knowledge of those laws by which they must decide; and that the Judges were justly sensible of their own deficiency; and that they had therefore frequently applied to the Court of Directors to lay particular points respecting their jurisdiction before counsel, and to transmit the opinion of such counsel to be the guide of their conduct."

Upon this Report the 13th Geo. III. c. 63, was passed. The Bill had met with considerable opposition on the part of the Company, but such opposition was fruitless; it was carried by an overwhelming majority in the House of Commons on the 10th of June 1773, and on the 20th of June it passed the Lords without opposition, and received the Royal Assent on the following day. The 13th section of this Statute empowered His Majesty to erect and establish a Supreme Court of Judicature at Fort William in Bengal, to consist of a Chief Justice and three other Judges, being barristers of England or

Ireland of not less than five years' standing, to be named and appointed from time to time by His Majesty, his heirs and successors. The same section declared that the said Supreme Court should have full power and authority to exercise and perform all Civil, Criminal, Admiralty, and Ecclesiastical jurisdiction; and to form and establish such rules of practice, and such rules for the process of the said Court, and to do all such other things as should be found necessary for the administration of justice and the due execution of all or any of the powers which, by the said Charter, should or might be granted or committed to the said Court; and also should be at all times a Court of Record, and should be a Court of Oyer and Terminer, and Gaol Delivery, in and for the said town of Calcutta and Factory of Fort William in Bengal aforesaid, and the limits thereof, and the Factories subordinate thereto. The Governor-General and Council, and the Judges of the Supreme Court, were, by the 88th section of the same Act, authorised to act as Justices of the Peace, and to hold Quarter Sessions.

The Supreme Court of Judicature at Fort William in Bengal was accordingly established under the above Statute, by Royal Charter dated the 26th of March 1774; and it is under this Charter that the Supreme Court is now held. It will be useful here to state shortly some of its provisions. By the 13th section, the Supreme Court at Calcutta was empowered to try and determine all actions and suits arising in Bengal, Behar, and Orissa, and all pleas, real, personal, or mixed, arising against the United Company and the Mayor and Aldermen of Calcutta, and against any of the King's subjects resident in Bengal, Behar, and Orissa, or who should have resided there, or should have debts, effects, or estates, real or personal, within the same, and against the executors and administrators of such subjects, and against any other person who should at the time of such action being brought, or when any action should have accrued, be or have been employed in the service of the said Company, or the said Mayor and Alder-

men, or of any other of the King's subjects, and against all other persons, inhabitants of India, residing in Bengal, Behar, or Orissa, upon any contract or agreement in writing with any of the King's subjects, where the cause of action should exceed the sum of 500 current rupees, and when such inhabitants should have agreed in the said contract, that, in case of dispute, the matter should be determined in the said Supreme Court. The same section limited the jurisdiction thus given as follows; viz. that the said Court should not try any suit against any person who should never have been resident in Bengal, Behar, or Orissa, or against any person who should, at the time of action brought, be resident in Great Britain or Ireland, unless such suit or action against such person so then resident in Great Britain or Ireland should be commenced within two years after the cause of action arose, and the sum to be recovered should not be of greater value than 30,000 rupees. By the 18th section of the Charter the Supreme Court was constituted a Court of Equity, as the Court of Chancery in England. The 19th section constituted it a Court of Oyer and Terminer, and Gaol Delivery, for Calcutta and Fort William, and the Factories subordinate thereto, with power to summon grand and petit juries, and to administer criminal justice as in the Courts of Oyer and Terminer in England, giving it jurisdiction over all offences committed in Bengal, Behar, and Orissa, by any subject of His Majesty, or any person in the service of the United Company, or of any of the King's subjects. The 22d section empowered the Supreme Court to exercise Ecclesiastical jurisdiction in Bengal, Behar, and Orissa, as the same was exercised in the diocese of London, and to grant probates and administrations to the estates of British subjects dying within the said provinces. The 25th section empowered the Court to appoint guardians of infants and of insane persons, and of their estates; and by the 26th section the said Supreme Court was appointed to be a Court of Admiralty in and for the provinces of Bengal, Behar, and Orissa, and to hear and determine all causes and

matters, civil and maritime, and to have jurisdiction in crimes maritime, according to the course of the Admiralty in England. An appeal lay, under sections 30—33, from the decisions of the Supreme Court at Fort William to the King in Council. No appeal was to be allowed except the petition was preferred within six months, and the amount in dispute exceeded 1000 pagodas.

Shortly after the grant of this Charter arose those unfortunate contentions between the Governor-General and Council and the Judges of the Supreme Court at Calcutta, which, whoever may have been in the wrong, were certainly very discreditable to both parties. The unanimity which existed, however, between the disputants in every measure throughout these unhappy disagreements proves that the difference arose, not from personal feelings, or from a desire of an undue extension of their several powers, but from a defect in the law, arising from the obscurity of the Statute, of which it has been well remarked, "that the Legislature had passed the Act of the 13th Geo. III. c. 63, without fully investigating what it was that they were legislating about; and that if the Act did not say more than was meant, it seemed at least to have said more than was well understood."[1]

The Legislature accordingly intervened; and, by the preamble to the 21st Geo. III. c. 70, and sections 2, 8, 9, and 10, of that Act, explained and defined the jurisdiction of the Supreme Court, declaring that the said Court had no jurisdiction over the Governor-General and Council for any act or order made or done by them in their public capacity; that if any Natives should be impleaded in the Supreme Court for any act done by order of the Governor-General and Council in writing, the said order might be given in evidence under the general issue, and should amount to a sufficient justification; that the Su-

[1] Letter from the Judges of the Supreme Court at Calcutta, dated Oct. 16, 1830. Fifth Appendix to the Third Report of the Select Committee of the House of Commons, 1831, p. 1284, 4to. edit.

preme Court should have no jurisdiction in any matter concerning the revenue, or concerning any act or acts ordered or done in the collection thereof, according to the usage and practice of the country, or the Regulations of the Governor-General and Council; that no person should be subject to the jurisdiction of the Court by reason of being a landowner, landholder, or farmer of land or of land-rent; that no person should be so subject to the jurisdiction of the said Court by reason of his being employed by the Company or by the Governor-General and Council, or on account of his being employed by a native of Great Britain, in any matter of dealing or contract between party or parties, except in actions for wrongs or trespasses, and also except in civil suits by agreement of parties, in writing, to submit the same to the decision of the said Court. Section 17 of this important Act also reserved their peculiar laws to Hindús and Muhammadans in certain civil matters, as hereafter will be noticed; and the 24th section provided that no action for wrong or injury should lie in the Supreme Court against any person whatsoever exercising a judicial office in the Country Courts, for any judgment, decree, or order of the said Court, nor against any person for any act done by or in virtue of the order of the said Court.

By the 24th Geo. III. c. 25, s. 44, passed in 1784, all His Majesty's subjects, as well servants of the Company as others, were declared to be amenable to all Courts of Justice, both in India and Great Britain, of competent jurisdiction to try offences committed in India, for all criminal offences committed in the territories of any native prince or state, or against their persons or properties, or the persons or properties of any of their subjects or people, in the same manner as if the same had been committed within the territories directly subject to and under the British Government in India.

By the 29th section of the 26th Geo. III. c. 57, all servants of the East-India Company, and all His Majesty's subjects resident in India, were made subject to the Courts of

Oyer and Terminer, and Gaol Delivery, for all criminal offences committed in any part of Asia, Africa, or America, beyond the Cape of Good Hope to the Straits of Magellan, within the limits of the Company's trade.

The 30th section of the same Act declared that the Governor or President and Council of Fort St. George, in their Courts of Oyer and Terminer, and Gaol Delivery, and also the Mayor's Court at Madras, according to their respective judicatures, should have jurisdiction, as well Civil as Criminal, over all British subjects whatsoever residing in the territories of the East-India Company on the Coast of Coromandel, or in any other part of the Carnatic or in the Northern Circars, or within the territories of the Soubah of the Deccan, the Nabob of Arcot, or the Rajah of Tanjore.

Section 67 of the 33rd Geo. III. c. 52, re-enacted section 44 of the 24th Geo. III. c. 25. Section 156 of the same Statute extended the Admiralty jurisdiction of the Supreme Court at Calcutta given under the Charter; and the Court was empowered, by means of juries of British subjects,[1] to try, according to the laws and customs of the Admiralty of England, all offences committed on the high seas.

By the 37th Geo. III. c. 142, s. 1, the number of Judges of the Supreme Court at Calcutta was limited to three.

The Mayors' Courts at Madras and Bombay existed until the year 1797, when they were abolished and superseded by Recorders' Courts, established under the 37th Geo. III. c. 142. These Recorders' Courts consisted of the Mayor, three Aldermen, and a Recorder, who was to be appointed by His Majesty; and their jurisdiction extended to Civil, Criminal, Ecclesiastical, and Admiralty cases. They were empowered to establish rules of practice, and they were to be Courts of Oyer and Terminer, and Gaol Delivery, for Fort St. George and Bombay; and their jurisdiction was to extend over British subjects resident within the British territories subject to the Govern-

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[1] Natives may now sit on juries.

ments of Madras and Bombay respectively, as well as those residing in the territories of native princes in alliance with those Governments. Their jurisdiction was also brought within the restrictions of the 21st Geo. III. c. 70; the laws of the Hindús and Muhammadans were reserved to Natives, and an appeal lay from their decisions to the King in Council.

The Recorder's Court at Madras was abolished by the 39th and 40th Geo. III. c. 79, and a supreme Court of Judicature was erected in its place, to be a Court of Record, and consist of a Chief Justice and two puisne Judges, who should be barristers in England or Ireland of not less than five years' standing. The powers vested in the Recorder's Court were transferred to, and to be exercised by, the Supreme Court, which was also directed to have the like jurisdiction, and to be invested with the same powers, and subject to the same restrictions, as the Supreme Court of Judicature at Fort William in Bengal. Letters patent, granting a Charter of Justice to the Supreme Court at Madras, were issued on the 26th of Dec. 1801.

By sections 99 and 100, of the 53rd George III. c. 155, all persons whatsoever were authorised to prefer, prosecute, and maintain, in His Majesty's Courts at Calcutta, Madras, and Bombay, all manner of indictments, informations, and suits whatsoever for enforcing the laws and regulations made by the Governor-General and Governors in Council, or for any matter or thing whatsoever arising out of the same. The Advocate-General at each of the several Presidencies was also empowered to exhibit informations in the said Courts against any person or persons whatsoever for any breach of the revenue-laws or Regulations of any of the said Governments, or for any fines penalties, forfeitures, debts, or sums of money, committed incurred, or due by any such person or persons in respect of any such laws or Regulations. Section 107 provided that where, by the Regulations, it would be competent to a party to prefer an appeal to the Court of highest appellate jurisdiction in the provinces, British subjects residing or trading, or occupying immoveable property within the provinces, should

be entitled to prefer, instead of such appeal, an appeal to His Majesty's Courts of Judicature at the several Presidencies. This section, however, has been since repealed by Act XI. of 1836; and no such right of appeal to the Supreme Courts now exists. Section 110 of the same Statute, after stating that doubts had been entertained whether the Admiralty jurisdiction of His Majesty's Courts at Calcutta, Madras, and Bombay, extended to any persons but those amenable to their ordinary jurisdiction, empowered the said Courts to take cognizance of all crimes perpetrated on the high seas, by any person or persons whatsoever, in as full and ample a manner as any other Court of Admiralty jurisdiction established by His Majesty's authority in any colony or settlement whatsoever belonging to the Crown of the United Kingdom.

The 4th Geo. IV. c. 71, passed in 1823, authorized the abolition of the Recorder's Court at Bombay, and the establishment of a Supreme Court of Judicature in its stead, to be a Court of Record, to consist of the like number of Judges as the Supreme Court at Fort William in Bengal, who should be barristers of England or Ireland of not less than five years' standing, and to be invested with the same powers and authorities as the said Supreme Court, and to have a similar jurisdiction and the same powers, and to be subject to the same limitations, restrictions, and controul.

The powers of the Supreme Courts at Madras and Bombay were placed upon an equal footing with those of the Supreme Court at Calcutta, in an explicit manner, by the 17th section of this Act, which declared that it should be lawful for the Supreme Court of Judicature at Madras, within Fort St. George, and the town of Madras, and the limits thereof, and the Factories subordinate thereto, and the territories subject to or dependent upon the Government of Madras; and for the Supreme Court of Judicature at Bombay, within the town and island of Bombay, and the limits thereof, and the Factories subordinate thereto, and the territories subject to or dependent upon the Government of Bombay, and the said Supreme Courts

respectively were thereby required, within the same respectively, to do, execute, perform, and fulfil, all such acts, authorities, duties, matters, and things whatsoever, as the Supreme Court of Fort William was or might be authorised, empowered, or directed to do, execute, perform, and fulfil, within Fort William in Bengal, or the places subject to or dependent upon the Government thereof. Letters patent, granting a Charter of Justice to the Supreme Court at Bombay, were issued on the 8th of Dec. 1823.

It may be remarked, that although by the 4th Geo. IV. c. 71, the Supreme Courts at Madras and Bombay are invested with the same powers as the Supreme Court at Fort William, there is no similar provision in any Statute in favour of the latter Court, that it shall exercise the same powers with the Supreme Courts at the other Presidencies.

It is unnecessary to enter more fully into the powers of the Supreme Courts at Madras and Bombay, as the Charters under which they are now held are founded upon that of the Supreme Court at Calcutta, and upon the provisions of the 21st Geo. III. c. 70.

There are some variations, however, in the Charters of the several Courts, that give rise to considerable doubt and difficulty, and these may be shortly alluded to. In the first instance, there is a difficulty with regard to the powers which the Justices of the Courts were to possess in the provinces as conservators of the peace, but this will more appropriately be noticed in another place. Again, the Supreme Court at Bombay is prohibited, by the 30th section of its Charter, from interfering in any matter concerning the revenue, even within the town of Bombay, which is in direct contradiction to the 53rd Geo. III. c. 155, ss. 99, 100. Natives are also exempted from appearing in the Supreme Courts at Madras and Bombay, unless the circumstances be altogether such as that they might be compelled to appear in the same manner in a Native Court; a provision which seems to place the jurisdiction of these Supreme Courts in such cases entirely at the

discretion of the Government, who regulate the Company's Courts as they please. This appears to be inconsistent with the duties assigned to the Courts by the Statutes. Lastly, with regard to crimes maritime, the 54th section of the Bombay Charter of Justice restricts the powers of the Supreme Court to such persons as would be amenable to it in its ordinary jurisdiction; which is again at variance with the 53rd Geo. III. c. 155, s. 110, if the ordinary jurisdiction, as is to be inferred from the other portions of the Charter, be limited to British subjects.

By the Statute 9th Geo. IV. c. 74, ss. 7, 8, 9, 56, and 70, provisions are made, without any distinction between Native and British persons, for the trial by the Supreme Courts of accessories before or after the fact to any felony, and of any accessory before or after the fact, after conviction of the principal, though the principal be not attainted of such felony; for the trial of murder or manslaughter, where the death, or the cause of death only, happens within the limits of the East-India Company's Charter; and for the trial of bigamy, whenever the offender is apprehended or found within the jurisdiction of the Courts, although the offence may have been committed elsewhere.

The Supreme Courts at all the Presidencies are authorised under their Charters to appoint their own ministerial officers, and are also empowered to admit and enrol such and so many advocates and attornies as shall seem meet; and no other persons but such advocates and attornies are allowed to plead or act for the parties.

By the Charters of the Supreme Courts at Madras and Bombay there were certain restrictions as to the admission and enrolment of advocates and attornies, which did not exist in the Calcutta Court, but these have been abolished by the 3rd and 4th Will. IV. c. 85, s. 115, and Act XIII. of 1845.

An appeal lies from the decisions of the Supreme Courts of Judicature to Her Majesty in Council in all suits where the

amount in dispute is of the value of 10,000 rupees.[1] This subject will be more especially treated of in a separate Chapter. The Supreme Courts are, by their Charters, vested with five distinct jurisdictions, Civil, Criminal, Equity, Ecclesiastical, and Admiralty;[2] and they are enjoined to accommodate their process, rules, and orders, to the religion and manners of the Natives, so far as the same can be done without interfering with the due execution of the laws and the attainment of justice.

It would be a difficult task to define exactly the powers and jurisdictions of Her Majesty's Supreme Courts in India, given by the Statutes and Charters above enumerated; and questions are constantly arising on these important subjects, which can only be reduced to certainty by the repeated decisions of the Courts, or by fresh enactments.

Several years since Sir Charles Grey and Sir Edward Ryan animadverted upon the uncertainty of the legislation with respect to the powers and jurisdictions of the Supreme Courts in the following terms:—"In one way or another," write the learned Judges, "sometimes by the mention of some qualification of the powers of the Court occurring in an Act or Charter, which has been afterwards insisted upon as a recognition; sometimes by a vague recognition of counter institutions, which have been already set on foot without any express authority, and which afterwards, upon the strength of the recognition, are amplified and extended; sometimes by the jurisdiction of the Supreme Court being stated in such a way as to leave it to be inferred that the *expressio unius* is the *exclusio alterius*; sometimes by provisions which, to persons unacquainted with India, may have appeared to be of little consequence, but which in reality involve a great deal; sometimes when Parliament has provided that new Courts should be established

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[1] Order in Council, 10th April, 1838.

[2] The jurisdictions are technically termed Sides of the Court: as the Crown Side, the Common Law Side, &c.

upon the same footing as the old one, by something finding its way into the constitution of the new Courts which is essentially different from the old, and would be destructive of their efficiency;—in some or all of these ways the Supreme Courts have come to stand at last in circumstances in which it is a very hard matter to say what are their rights, their duties, or their use."[1]

Many of the doubts and difficulties thus complained of still exist, and I cannot, I believe, conclude the present remarks on the Supreme Courts more appropriately than by quoting the account of their jurisdiction appended to the First Report of the Commissioners appointed in 1853 to consider the reform of the Judicial establishments of India.

"The local jurisdiction of the Supreme Court at Fort William is limited to the town of Calcutta, which for this purpose is bounded on the west side by the river Hooghly, and on the other sides by what is called the Mahratta ditch. Within these limits the Court exercises all its jurisdictions, civil and criminal, over all persons residing within them,[2] with the exception of its ecclesiastical jurisdiction, which has not been applied to Hindús and Muhammadans beyond the granting of probates of wills.

The persons residing within these limits, and therefore subject to the local jurisdiction of the Supreme Court, are computed, according to the latest information, at 413,182.

2. In like manner the Court exercises all its jurisdictions over all British-born subjects, that is, persons who have been born within the British islands, and their descendants, who are resident in any of the provinces which are comprehended within the Presidency of Bengal,[3] or the subordinate Government of

[1] Letter from the Judges of the Supreme Court at Calcutta, dated 16th of Oct. 1830. Fifth Appendix to the Third Report from the Select Committee of the House of Commons, 1831, p. 1296, 4to. edit.

[2] Charter, s. 19. Stat. 21, Geo. III. c. 70, s. 17.

[3] Charter, s. 13.

Agra. The number of persons so subject to the jurisdiction of the Court, including the members of the covenanted services, civil and military, but exclusive of the Queen's troops and their families, was on the 30th March 1851, according to the Parliamentary census returns, 22,387.

3. All persons resident at any places within the said provinces, who have a dwelling-house and servants in Calcutta, or a place of business there where they carry on any trade, through their agents or servants, are held to be constructively inhabitants of Calcutta for the purpose of liability to the common law and equity jurisdictions of the Court.

4. Natives of India, within the said provinces, who have bound themselves upon any contract or agreement in writing with any British subject, where the cause of action exceeds the sum of 500 rupees, to submit to the jurisdiction of the said Court, are subject to its jurisdiction in disputes relating to the said contract.[1]

5. In like manner, persons who avail themselves of the Court's jurisdiction for any purpose, are held liable to its jurisdiction in the same matter, even on other sides of the Court than that of which they have availed themselves; as, for instance, persons who have applied for and obtained probates of wills, are held liable to the Court's equity jurisdiction for the due administration of the estate.

6. All persons who, at the time of action brought or cause of action accrued, are or have been employed by, or directly or indirectly in the service of the East India Company, or any British subject, are liable to the civil jurisdiction of the Court in actions for wrongs or trespasses, and also in any civil suit by agreement of parties in writing to submit to the jurisdiction of the said Court;[2] and all persons who, at the time of committing any crime, misdemeanour, or oppression, are or have

[1] Charter, s. 13.

[2] Charter modified by Stat. 21 Geo. III. c. 70, s. 10.

been employed, or directly or indirectly in service as aforesaid, are liable to the criminal jurisdiction of the Court.[1]

7. The Admiralty jurisdiction of the Court extends over the provinces of Bengal, Behar, and Orissa, and all other territories and islands adjacent thereto, which, at the date of the charter, were or ought to be dependent thereon, and comprehends all causes civil and maritime, and all matters and contracts relating to freights, or to extortions, trespasses, injuries and demands whatsoever between merchants or owners of ships and vessels employed or used within the jurisdiction aforesaid, or other persons, contracted, done, and commenced in or by the sea, public rivers, or creeks, or within the ebbing and flowing of the sea about and throughout the said three provinces and territories.[2] The criminal jurisdiction extends to all crimes committed on the high seas by any person or persons whatsoever in as full and ample a manner as any other Court of Admiralty in any colony or settlement belonging to the Crown.[3]

8. The Supreme Courts at Calcutta, Madras and Bombay, have criminal jurisdiction over all British subjects for crimes committed at any place within the limits of the Company's Charter, that is, any part of Asia, Africa, or America, beyond the Cape of Good Hope to the Straits of Magellan, or for crimes committed in any of the lands or territories of any Native Prince or State, in the same way as if the same had been committed within the territories subject to the British Government in India."[4]

"The local jurisdiction of the Supreme Court at Madras is confined to the town of Madras, which for this purpose is held to be bounded by the sea on the east, the Saint Thomé river on the south, the banks of the Long Tank and the Nungumbaukum

[1] Charter, s. 19. [2] Charter, s. 26.

[3] Charter explained by Stat. 33 Geo. III. c. 52, s. 156, and 53 Geo. III. c. 155, s. 110.

[4] Charter, s. 19. Stat. 23 Geo. III. c. 67, s. 29. Stat. 33 Geo. III. c. 52, s. 67.

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Tank, with the villages of Kilpaukum and Peramboor on the west, and a line from the latter village to the sea on the north, and to comprise all the lands included in the villages of Chettapet, Kilpaukum, Peramboor, and Tandear. The inhabitants of Madras within these limits are computed at about 720,000.

The British subjects residing within the provinces attached to Madras, and subject to the jurisdiction of the Supreme Court, were on the 30th March 1851, according to the Parliamentary Census Returns, 15,133, including the civil and military members of the covenanted services, but exclusive of the Queen's troops. The Court's civil jurisdiction extends to British subjects within any of the dominions of the Native Princes of India in alliance with the Government of Madras, but the number of these must be very small, and cannot be taken into calculation."

"The local jurisdiction of the Supreme Court at Bombay is confined to the Island of Bombay, the inhabitants of which are computed at 566,119.

The British-born subjects who reside within the provinces comprised in the Presidency of Bombay, including the covenanted servants of the Company, were on the 30th March 1851, according to the Parliamentary Census Returns, 10,704, exclusive of the Queen's troops.

The Supreme Courts at Madras and Bombay have generally the same powers, and their jurisdictions are generally the same within the settlements of Madras and Bombay, as those of the Supreme Court of Judicature at Fort William within the territories attached to the Presidency of Bengal and Subpresidency of Agra."

(2) Law Administered in the Supreme Courts.

The law which now obtains in the Supreme Courts at the three Presidencies may be classed under seven distinct heads—

1. The Common law, as it prevailed in England in the year 1726, and which has not subsequently been altered by Statutes

especially extending to India, or by the Acts of the Governor-General in Council.

2. The Statute law which prevailed in England in 1726, and which has not subsequently been altered by Statutes especially extending to India, or by the Acts of the Legislative Council of India.

3. The Statute law expressly extending to India, which has been enacted since 1726, and has not been since repealed, and the Statutes which have been extended to India by the Acts of the Governor-General in Council.[1]

4. The Civil law as it obtains in the Ecclesiastical and Admiralty Courts in England.

5. Regulations made by the Governor-General in Council and the Governors in Council previously to the 3rd and 4th Will. IV. c. 85, and registered in the Supreme Courts, and the Acts of the Governor-General in Council made under the 3rd and 4th Will. IV. c. 85.

6. The Hindú law and usages in actions regarding inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party in which a Hindú is a defendant.

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[1] The Statute law affecting India and the East-India Company is to be found collected in various works. The best collection is entitled, Charters and Statutes relating to the East-India Company, from Elizabeth, 1600, to the 56th Geo. III., 1816. 4to. Lond. 1817. The latest work on the subject, but which omits much that is important, is entitled, The Law relating to India and the East-India Company. 4to. Lond. 1842. (Third Edit.). This compilation extends to the 5th Vict. c. 5. The student will find a vast quantity of information regarding the Statute law affecting India in Auber's Analysis of the Constitution of the East-India Company, and of the Laws passed by Parliament for the government of their affairs both at home and abroad. Together with a Supplement. 8vo. Lond. 1826—1828. Auber's Analysis is a most valuable work both for study and reference, and should be in the hands of all who wish to acquire a knowledge of the law of India. A useful tabular statement of the Statutes relating to Indian affairs will also be found appended to Annand's Brief Outline of the existing system of the Government of India. 4to. Lond. 1832.

7. The Muhammadan law and usages in actions regarding inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party in which a Muhammadan is a defendant.

See page 151.

The three last species of law are peculiar to the Courts in India, and will be described in a subsequent Chapter.

2. The Court of the Recorder of Prince of Wales' Island, Singapore, and Malacca.

The island of Singapore, and the town and fort of Malacca, were ceded to the British by His Majesty the King of the Netherlands, by treaty, on the 17th of March 1824, and were afterwards transferred to the Honourable East-India Company by the 5th Geo. IV. c. 8. The 6th Geo. IV. c. 85, s. 21, empowered the said Company to annex Prince of Wales' Island to those possessions; and the annexation was accordingly effected, and the whole formed into a Government, entitled "The Governor and Council of Prince of Wales' Island, Singapore, and Malacca."

In pursuance of the 19th section of the last mentioned Act of Parliament, Letters patent were issued, dated the 27th of November, 1826, by which a Court of Judicature was constituted; and it was directed that it should consist of the Governor and Resident Councillor, and one other Judge, to be styled the Recorder.

This Court was to be a Court of Record, and was empowered by its Charter to exercise Civil, Criminal, and Ecclesiastical jurisdiction, and to be a Court of Oyer and Terminer, and Gaol Delivery. The Court was also empowered to reprieve execution of any capital sentence, and to substitute a lesser punishment; and the Judges were constituted Justices of the Peace, and were authorised to hold general and quarter sessions. They were also empowered to appoint by commission covenanted servants of the Company to act as Justices of the Peace within the said settlement.

An appeal lay from the decisions of the Recorder's Court to the King in Council.[1]

In addition to the jurisdictions above mentioned, an Admiralty jurisdiction was granted to the Recorder's Court by the 6th and 7th Will. IV. c. 53, and the Letters patent issued in pursuance of that Statute, similar to that exercised by the Supreme Court at Fort William in Bengal.[2]

Prince of Wales' Island is now, with all the eastern settlements, under the Presidency of Bengal.

3. Courts of Requests and Small Causes.[3]

Courts of Requests were established at Madras, Bombay, and Fort William, by the Charter of George the Second, dated the 8th of Jan. 1753, by which they were empowered to determine suits where the debt, duty, or matter in dispute should not exceed 5 pagodas.

The jurisdiction of these Courts of Requests was extended by the 37th Geo. III. c. 142, by the 30th section of which Statute they were authorised to hear and determine all actions, plaints, and suits, in which the matter in dispute should not exceed the value of 80 current rupees, and to award execution thereupon for the debt or sum adjudged to be due. A further extent of the jurisdiction of the Courts of Requests at Calcutta

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[1] An abstract of the Charter of the Court will be found in The Law relating to India and the East-India Company, p. 570, *et seq.*

[2] An abstract of the Admiralty Charter of the Recorder's Court is inserted in Smoult and Ryan's Rules and Orders of the Supreme Court at Fort William in Bengal, Vol. II. App. p. cvii.

[3] The Courts of Small Causes do not strictly come within the class of "Her Majesty's Courts," since they were constituted and established by the Act of the Governor-General in Council, and depend upon the Executive Government; nevertheless, as they supersede the Courts of Requests, as the Judges of the Supreme Courts are *virtute officii* also Judges of the Courts of Small Causes, and as such Judges exercise a certain controul over the practice and proceedings of these Courts, I have thought it advisable to range them under the head of Her Majesty's Courts.

and Madras took place under the 39th and 40th Geo. III. s. 17, which, after stating that great inconvenience had resulted from the manner in which the Courts of Requests for the recovery of small debts in the respective settlements of Fort William and Fort St. George were constituted, enacted that it should be lawful for the Governor-General and Council of Fort William, and the Governor and Council of Fort St. George, to extend the jurisdiction of the said Courts to an amount not exceeding 400 sicca rupees, and to frame new rules and orders, and to establish new forms of proceeding, for new modelling, altering, and reforming the constitution and practice of the said Courts; and by their Proclamation to declare and notify such new constitution, rules, orders, and forms of proceeding, and the time from whence they were to have force and effect.

The first Proclamation under this Act was made and published at Fort William on the 18th of March 1802, declaring and defining the jurisdiction, powers, and practice of the Court of Requests. This Proclamation appointed three Commissioners for the recovery of small debts, and extended the jurisdiction of the Court to the sum of 100 sicca rupees. Two other Proclamations were afterwards made, extending the jurisdiction of the Court of Commissioners successively to 250 and 400 sicca rupees. The latter, which also increased the number of Commissioners to four instead of three, was published on the 29th of October 1810.[1]

In the year 1839 the Governor-General in Council, by Act XXVII. of that year, authorised the Court of Requests for the town of Calcutta, in certain cases, to execute decrees passed by the Judge of the Dewanny Adawlut of the Zillah Twenty-four Pergunnahs.

In the year 1844 a draft Act was submitted to the Legislative Council for abolishing the Court of Requests at Calcutta, and for substituting in its place a Court for the exercise of civil

[1] For these Proclamations see Smoult and Ryan's Rules and Orders of the Supreme Court of Judicature at Fort William in Bengal. Vol. II. App. p. xi. *et seq.*

jurisdiction in the city of Calcutta, to be called the Subordinate Civil Court for the city of Calcutta;[1] but the proposed Act never received the sanction of Government.

Doubts having arisen as to the powers of the Commissioners of the Court of Requests at Calcutta, Act XII. of 1848 was passed for the better defining the jurisdiction of the said Court. By this Act it was declared that all proceedings had, or to be had, in pursuance of the above-mentioned Proclamations, by the said Commissioners were valid; and all powers and authorities given to the said Commissioners by the first Proclamation were extended to all matters which they were authorised to determine by the other Proclamations. It was further enacted, that the said Commissioners might sit together or apart, and hold one, or two, or three separate Courts sitting at the same time, or at different times; that all rules, forms of procedure, and tables of fees, formerly and then used or established in the said Court, should be valid, notwithstanding the omission to procure the allowance of the Supreme Court, or the non-printing and non-publication of the same; and that all summonses and other process issued by the said Commissioners, or any of them, whether issued before or after the passing of the said Act, should be deemed to be valid and effectual in law, on whatsoever day the same should have been made returnable.

The Courts of Requests at the three Presidencies were, by the Charters of Justice, and by the said Proclamations, made subject to the order and controul of the Supreme Courts, in the same manner as the inferior Courts in England are, by law, subject to the order and controul of the Court of Queen's Bench.

Courts in the nature of Courts of Requests were directed to be established in the Settlement of Prince of Wales' Island, Singapore, and Malacca, by the Charter of Justice under which the Recorder's Court was constituted at that Settlement. These

[1] Special Reports of the Indian Law Commissioners. 1845, p. 45.

Courts were to determine suits not exceeding in value thirty-two dollars, and were to be subject to the order and controul of the Recorder's Court.

By Act IX. of 1850 Courts of Small Causes were established at the three Presidencies, in lieu of the Courts of Requests. They have the same local jurisdiction as the latter Courts and are Courts of Record. The Governor-General in Council is empowered to appoint Judges of these Courts, not exceeding three, one of whom is to be a Barrister-at-Law, or Advocate of one of the Supreme Courts of India, or of the Court of Session in Scotland. Judges of the Supreme Courts may exercise all the powers of a Judge appointed under this Act, and suits may be tried by their sitting in the Supreme Courts as though they were Judges of the Courts of Small Causes. The jurisdiction of these Courts extends to the recovery of any demand not exceeding 500 rupees. All suits brought in the Courts of Small Causes are to be heard and determined in a summary way; and every defence which would be deemed good in the Supreme Courts, sitting as Courts of Equity, is a good bar to any legal demand in the Courts of Small Causes. These Courts have no jurisdiction in any matter concerning the Revenue, or concerning any act ordered or done by the Governor, or Governor-General, or any member of the Council of India, or of any Presidency, in his public capacity, or done by any person by order of the Governor-General or Governor in Council, or concerning any act ordered or done by any Judge or Judicial Officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court, or any such Judge or Judicial Officer, or in any suit for libel or slander. The Judges of these Courts are empowered to make rules of practice and procedure, subject, however, to the approval of the Supreme Courts. No cause can be removed from the Courts of Small Causes into the Supreme Courts by any writ or process, unless the disputed amount exceeds 100 rupees, and then only by leave of a Judge of the Supreme Courts.

4. Insolvent Courts.

The Supreme Courts at Fort William and Madras, and the Recorder's Court at Bombay, were empowered, by the 23rd section of the 39th and 40th Geo. III. c. 79, to make rules and orders, extending to insolvent debtors in India the relief intended by the 32d Geo. II. c. 28, commonly called the Lords' Act; and the 24th section of the same Statute ratified any rules and orders previously made by the said Courts in the three Presidencies for the relief of insolvent debtors, and confirmed the acts done under such rules and orders.

By the 1st and 2nd Vict. c. 100, s. 119, it was, however, enacted, that no prisoner for debt should petition any Court for his discharge under the Lords' Act; nor is any creditor to petition any Court for the exercise of the compulsory powers of that Act against debtors.

Insolvent Courts, separate from the Supreme Courts of Judicature, were established at the three Presidencies by the 9th Geo. IV. c. 73, to be severally presided over by one of the Judges of the respective Supreme Courts. These Insolvent Courts were empowered by the said Statute to administer oaths, and to examine witnesses on oath or affirmation, to issue commissions to take evidence, or to force the attendance of witnesses, and to examine debtors and parties capable of giving information as to their debts and estates; they were also empowered to impose fines in a summary manner, and to commit to gaol for contempt of Court, but not to award costs except under the rules of the Supreme Courts. Under the 4th section of this Act an appeal lay from the Insolvent Courts to the Supreme Courts of Judicature. It was also provided, by the 80th section, that the Supreme Courts might make rules for facilitating the relief of insolvent debtors in cases for which sufficient provision had not been made; and the 81st section declared that the said Act should remain in force until the year 1833.

It was provided by the 2nd Wm. IV. c. 43, that the 9th Geo. IV. c. 73 should be continued and remain in force until the 1st of March 1836; and an extension of the same Statute, to the year 1839, was enacted by the Governor-General in Council by Act IV. of 1836. Certain amendments, which it will be unnecessary to specify, were made by the 4th and 5th Wm. IV. c. 79, which also provided that the schedules of insolvent debtors in India should be transmitted to the Court of Directors of the East-India Company, and be open to the inspection of creditors.

The above-mentioned Acts were all further extended by the 6th and 7th Wm. IV. c. 47, the 3rd and 4th Vict. c. 80, and the 9th and 10th Vict. c. 14, the last Statute extending them to the 1st of March 1847, and thence to the end of the next session of Parliament.

In the month of June 1848 the 11th and 12th Vict. c. 21 was passed to consolidate and amend the laws relating to insolvent debtors in India. This Statute repealed the 9th Geo. IV. c. 73, and the 4th and 5th Wm. IV. c. 79, save as to acts then done and pending under the subsequent Statutes above enumerated. By section 2, the Courts established under the 9th Geo. IV. c. 73, were continued with the same powers as theretofore; the 73rd section enacted that an appeal should lie, as before, to the Supreme Courts; and the 76th section authorised the said Courts to make rules and regulations, and to alter and amend the same, subject to Her Majesty's approval. The schedules of insolvents were directed, by section 85, to be transmitted to England whenever it should appear that any creditors were resident out of the Company's Charter.

The 88th section of the above Statute enacted that a Court for the relief of insolvent debtors should be established at the Settlement of Prince of Wales' Island, Singapore, and Malacca, and the several powers of the said Statute were extended, with certain exceptions, to that Settlement.

5. Vice-Admiralty Courts.

By section the 25th of the 39th and 40th Geo. III. c. 79, His Majesty was empowered to issue a Commission from His High Court of Admiralty in England for the trial and adjudication of prize causes and other maritime questions arising in India, and to nominate all or any of the Judges of the Supreme Court of Judicature at Fort William in Bengal, or of the Supreme Court of Judicature to be erected at Madras, or of the Court of the Recorder at Bombay, either alone or jointly with any other persons to be named in such Commission, to be Commissioners for the purpose of carrying such Commission into execution.

The 2nd Wm. IV. c. 51, which was passed for the regulation of the practice and the fees in the Vice-Admiralty Courts abroad, and to obviate doubts as to their jurisdiction, enacted that there should be an appeal from such Vice-Admiralty Courts to the High Court of Admiralty in cases of costs; and their jurisdiction was defined to extend to all cases where a ship or vessel, or the master thereof, should come within the local limits of any Vice-Admiralty Court; and that it should be lawful for any person to commence proceedings in any suits for seamen's wages, pilotage, bottomry, damage to a ship by collision, contempt in breach of the regulations and instructions relating to His Majesty's service at sea, salvage, and droits of Admiralty, in such Vice-Admiralty Court, notwithstanding the cause of action might have arisen out of the local limits of such Court, and to carry on the same in the same manner as if the cause of action had arisen within the said limits.

A separate Vice-Admiralty Court was established in Calcutta in 1822,[1] but its functions are at present suspended, for

[1] See the Commission in Smoult and Ryan's Rules and Orders of the Supreme Court of Judicature at Fort William in Bengal. Vol. II. App. p. i.

no Marshal or Registrar is appointed by the High Court of Admiralty, and the Chief Justice has no authority to make any such appointments.[1] I am not aware that any Vice-Admiralty Court has ever been established at Madras or Bombay.

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[1] Observations on the Judicial Institutions of Bengal, p. 29. 8vo. Lond. 1849.

CHAPTER II.

JUSTICES OF THE PEACE, MAGISTRATES, AND CORONERS.

THE Justices of the Peace in India are of two descriptions, viz. those who, *virtute officii*, are empowered to act in that capacity by the immediate authority of Parliament, and those who are appointed by the local Government under Commissions issued in the name of Her Majesty.

I shall here state shortly the law relating to the Justices of the Peace, and describe their jurisdiction and functions.

Justices of the Peace were first established at Madras, Bombay, and Calcutta, by the Charter of Geo. I., in the year 1726, which appointed the Governors and Councils at those places to be Justices of the Peace with power to hold Quarter Sessions.

The 38th section of the 13th Geo. III. c. 63, enacted, that the Governor-General and Council, and the Judges of the Supreme Court, should be Justices of the Peace for the Settlement of Fort William, and the Settlements and Factories subordinate thereto; and the Governor-General and Council were directed to hold Quarter Sessions within the said settlement of Fort William; such Quarter Sessions to be a Court of Record.

The Charter of Justice establishing the Supreme Court at Calcutta, which followed the Statute, authorised such Court to have controul over the Court of Quarter Sessions and the Justices, for any thing done by them while sitting as a Court of Quarter Sessions, or in their capacity as Justices, in the same manner and form as the inferior Courts and Magistrates in England are by law subject to the order and controul of the Court of King's Bench; and the Supreme Court was empowered to issue to them writs of Mandamus, Certiorari, Procedendo, and Error. By the 4th section of the same

Charter it was ordained that the Judges of the Supreme Court at Fort William should respectively be Justices and Conservators of the Peace, and Coroners, within and throughout the provinces, districts, and countries of Bengal, Behar, and Orissa, and every part thereof; and should have such jurisdiction and authority as Justices of the Court of King's Bench have within England by the Common Law thereof.

The 33rd Geo. III. c. 52, s. 151, after stating that the Governor-General of Fort William, and the Judges of the Supreme Court at Fort William, and the Governor and Council of Fort St. George on the coast of Coromandel, and the Governor and Council of Bombay, were the only persons authorised by law to act as Justices of the Peace in and for Bengal, Behar, and Orissa, the Presidency of Fort St. George, and the Presidency, Island, Town and Factory of Bombay, and the places belonging and subordinate to the two last-mentioned Presidencies respectively, enacted, that it should be lawful for the Governor-General in Council of Fort William to appoint Justices of the Peace from the covenanted servants of the East-India Company, or other British inhabitants, to act within and for the said Provinces and Presidencies, and places thereto subordinate respectively, by commissions to be issued by the said Supreme Court on warrant from the said Governor-General in Council; with a proviso, however, that such Justices should not hold or sit in any Court of Oyer and Terminer, and Gaol Delivery, unless called upon by the Justices of the said Court, and specially authorised by Order in Council. The 153rd section of the same Statute provided that all convictions, judgments, orders, and other proceedings before Justices of the Peace should be removable by Certiorari into the Court of Oyer and Terminer, which should have power to hear and determine the matter of such proceedings, in like manner as the Court of King's Bench at Westminster.

Section 155 also empowered the Governor-General and Governors in Council to call in the Justices of the Peace to sit

in Council to hear appeals from the Provincial Courts; but such appeals have been since abolished. Section 157 of this Statute authorised the Governors of Presidencies to appoint Coroners who should exercise the same powers as Coroners in England. Section 158 provided that the Justices of the Peace for the three Presidency Towns should be empowered to take measures for cleansing, watching, and repairing the streets, and to make assessments to the extent laid down in the Act, to defray the expenses of the same. It would appear that the Courts of Quarter Sessions were held only for the purposes of making this assessment.

The 39th and 40th Geo. III. c. 79, s. 2, and the 8th section of the Charter which followed that Statute, establishing the Supreme Court of Judicature at Madras, appointed the Judges of that Court to be Justices of the Peace, and Coroners, within and for the settlement of Fort St. George, and the town of Madras, and the Factories subordinate thereto, and all the territories subject to, or dependent upon, the Government of Madras. The 19th section of the same Statute provided that the Justices of the Peace in India might convict offenders for breach of the Rules or Regulations made under the 13th Geo. III. c. 53, and order corporal punishment thereon; and that no such conviction should be reviewed, or brought into any Superior Court by Certiorari or appeal.

The Madras Charter of Justice gave the Supreme Court at that Presidency the same controul over the Court of Quarter Sessions and the Justices at Madras, as that exercised by the Supreme Court at Fort William in Bengal.

The 47th Geo. III. sess. 2, c. 68, s. 4, empowered the Governors and Members of Council of Madras and Bombay to act as Justices of the Peace for those towns, and the settlements and Factories subordinate thereto respectively, and to hold Quarter Sessions; and they were further authorised, by the 5th section of the same Statute, to issue Commissions under the seals of the Supreme Court at Madras, and the Court of the Recorder at Bombay respectively, to appoint

covenanted servants of the East-India Company, or other British subjects, to be Justices of the Peace within the said Provinces and the places subordinate thereto respectively; and the said Justices of the Peace were made liable and subject to the rules and restrictions enacted with respect to the Justices of the Peace appointed by the Governor-General of Fort William, whose power of appointing Justices of the Peace for the Presidencies of Madras and Bombay was annulled by the next following section of the same Act.

By the 13th and 47th of Geo. III., above cited, the Governor-General in Council, and the Governors in Council of Madras and Bombay, were respectively empowered to make rules, ordinances, and regulations, for the good order and government of the Presidency Towns, subject to the previous condition of being duly registered and published in the Supreme or Recorder's Court, as the case might be. In the exercise of this power, the Governments of the various Presidencies enacted, from time to time, regulations authorising and empowering Justices of the Peace to take cognizance of, and to punish, certain offences.

Section 105 of the 53rd Geo. III. c. 155, authorised the Magistrates in the Provinces to act as Justices of the Peace, and to have jurisdiction in cases of assault, forcible entry, or other injury accompanied by force, not being felony, committed by British subjects residing without the limits of Calcutta, Madras, and Bombay, on the Natives of India: the convictions by such Magistrates were, however, made removable by Certiorari into the Courts of Oyer and Terminer and Gaol Delivery. And by the next section the said Magistrates were given a jurisdiction in cases of small debts due to Natives from British subjects.

The 4th Geo. IV. c. 71, s. 7, and the 10th section of the Charter of Justice which followed that Statute, establishing the Supreme Court of Judicature at Bombay, appointed the Judges of the said Supreme Court to be Justices and Conservators of the Peace, and Coroners, within and throughout the

settlement of Bombay, and the Factories subordinate thereto, and the territories subject to, or dependent upon, the Government of Bombay.

The Bombay Charter of Justice gave the Supreme Court at that Presidency the same controul over the Court of Quarter Sessions and Justices at Bombay as that exercised by the Supreme Court at Calcutta.

It may be here observed that the jurisdiction of the Supreme Courts, both at Madras and Bombay, is generally restricted to British subjects, and this would seem to limit the power of the Judges to act in the Provinces as Conservators of the Peace.

The first Charter of Justice granted in the year 1826 to the Court of the Recorder at Prince of Wales' Island, Singapore, and Malacca, constituted the Judges of the said Court Justices and Conservators of the Peace within and throughout that settlement, and the places subordinate thereto.

By the 2d & 3d Will. IV. c. 117, the Governor-General in Council at Fort William, and the Governors in Council at Madras and Bombay respectively, were empowered to nominate and appoint, in the name of the King's Majesty, any persons resident within the territories of the East-India Company, and not being subjects of any foreign state, to act within and for the towns of Calcutta, Madras, and Bombay respectively, as Justices of the Peace.

In virtue of the powers vested in them by the above-mentioned Statutes the local Governments at the Presidencies of India appointed Justices of the Peace and Magistrates for the towns of Calcutta, Madras, and Bombay, whose powers and jurisdiction were defined by the Acts of Parliament and by the rules and regulations passed by the Local Government, and registered in the Supreme Court. This continued until the 3d & 4th Will. IV. c. 85, came into operation in the year 1834. By sec. 43, of that Statute, powers of legislation for the whole of India were conferred upon the Governor-General in Council; and by sec. 45, the necessity for the registration

of the legislative provisions for the Presidency Towns was done away with; and thenceforth the Acts of the Supreme Government of India contain the provisions which regulate the jurisdiction and powers of the Justices of the Peace for the towns of Calcutta, Madras, and Bombay.

It may be remarked that the powers of punishment conferred upon Justices of the Peace at Calcutta under the rules passed previously to the 3d & 4th Will. IV., had for the most part been exercised by two Justices. By Act IV. of 1835, however, it was provided that "all powers whatever in criminal cases which, by virtue of any law now in force, may be exercised by two Justices of the Peace for the town of Calcutta, shall be exercised by one such Justice;" and by Act I. of 1837, it was declared lawful for one Justice of the Peace to issue a warrant of distress for the recovery of arrears of assessment accruing under the Statute 33d Geo. III. c. 52. Act XXXII. of 1838 makes the same provisions in respect to Justices of the Peace in the Mofussil, and the same were extended to Madras by Act IX. of 1849.

In addition to the Court of Magistrates for the town of Bombay, there is a Court of Petty Sessions, which sits weekly for the despatch of business. Its origin has not been traced, but it arose probably out of a recommendation made to the Government of Bombay by Sir James Mackintosh, in the year 1811.

By Rule, Ordinance, and Regulation I. of 1834, provision was made for the appointment by the Governor in Council of Bombay of two Magistrates, being Justices of the Peace, and for the assembling on Thursday in every week of the Court of Petty Sessions. The Court was to consist of not less than three Justices of the Peace, one of them being a Magistrate, one an European, and one a Native, to be attended by a Barrister as Assessor,[1] being a Justice of the Peace, an Advocate of

[1] So much of the Rule, Ordinance, and Regulation as enacts that the Court of Petty Sessions shall be attended by a barrister as assessor, or by any person as or by way of assessor, has been repealed by Act II. of 1854.

the Supreme Court, and appointed by the Governor in Council. It was to exercise the power of summary conviction and punishment according to the course pursued by two Justices of the Peace in certain cases under authority of Statutes, and a like jurisdiction generally over all acts done in violation of the rules legally passed by the Governor in Council for the good order and government of the Presidency, in respect of which no other jurisdiction was exclusively provided; and was also empowered to levy pecuniary forfeitures and penalties imposed by them by distress and sale of goods and chattels where not otherwise provided.

It was provided by Act IV. of 1843, that an appeal should lie from all sentences passed by any Justice of the Peace acting without the local limits of the Supreme Courts, and from all sentences passed by any Magistrates exercising jurisdiction under the provisions of the 53d Geo. III. c. 155, to the same authority, and subject to the same rules, as are provided by the Regulations and Acts of the Government in the case of sentences passed by Magistrates in the exercise of their ordinary jurisdiction. And cases so made the subject of an appeal were not to be liable to a revision by Certiorari.

Act VI. of 1845 empowered the Supreme Courts at each of the Presidencies, upon the order or warrant of the executive Government, to issue separate Commissions to any persons not named in the then last general Commission of the Peace, to be nominated Justices of the Peace for each respective Presidency. Such Commissions were directed to be issued in the Queen's name, and tested by the Chief Justice of the respective Supreme Courts.

Act VII. of 1853 extends the Statute of the 53d Geo. III. c. 155, and Act IV. of 1843, to cases of assault, forcible entry, or other injury, accompanied with force, not being felony, which may be committed in any part of the territories under the Government of the East India Company, not being within the towns of Calcutta or Madras, or the islands of Bombay or Colaba, or the settlement of Prince of Wales' Island, Singapore, and

Malacca, by any British subject or other person, against the person or property of any person whatever. The powers formerly exercised by the Zillah Magistrate in such cases were given by this Act to Joint Magistrates or other persons lawfully exercising the powers of a Magistrate.

The jurisdiction of Justices of the Peace in India extends over the whole Presidency for which they are appointed, and they can exercise their functions in any part of it: it also extends over the following classes:—

1. All persons whatever, whether British or Native subjects, in respect of offences committed within the limits of the ordinary jurisdiction of the respective Supreme Courts of Judicature.

2. All British subjects resident in any part of the Presidency, except that, as regards crimes and offences triable by jury, and committed by British officers or soldiers at places more than 120 miles from the seat of Government, they are not called upon to interfere, such crimes being cognizable by a Court Martial.[1]

3. All persons who may have committed crimes or offences at sea.

Lastly, All persons whatever resident without the jurisdiction of the Supreme Courts and the Court of the Recorder of Prince of Wales' Island, are subject to the jurisdiction of Magistrates and Joint Magistrates acting as Justices of the Peace, under the 53d Geo. III. c. 155, Act IV. of 1843, and Act VII. of 1853, in the cases provided for by the said Statute and Acts of Government.

The functions of a Justice of the Peace are threefold. First, the trial and punishment of offences by summary conviction, and without a jury; Secondly, the investigation of charges in view to the committal or discharge of the accused person; and, Thirdly, the prevention of crime, and breaches of the peace.[2]

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[1] 3d & 4th Vict. c. 37, ss. 2—4.

[2] The powers of the Justices of the Peace and Magistrates of the Presidency Towns, and the offences which they are empowered to take cogni-

CHAPTER III.

THE SUDDER AND MOFUSSIL COURTS.

THE systems for the administration of justice by the Honourable East-India Company now actually existing in the Presidencies of Bengal, Madras, and Bombay, are based upon the Regulations passed by the Governments of those Presidencies respectively in the years 1793, 1802, and 1827; the plan introduced into Bengal being the foundation of the other systems. Previously to 1793 Courts of Justice had been established in Bengal by the Governor-General and Council; and in Bombay similar Courts had been formed so early as 1799, adapted to the local circumstances, from the Bengal system: at Madras there were no Company's Courts until the year 1802.

In the following description of the Sudder and Mofussil Courts, I purpose, though it will necessarily involve some repetition, to treat separately those of each Presidency. I shall, in the first place, after tracing shortly the rise and progress of the three Adawlut systems, describe the Courts of Civil and Criminal Judicature and the Police Establishments, as constituted respectively in the years 1793, 1802, and 1827; secondly, taking those years as starting-points, I shall enumerate the modifications and alterations that have since occurred, down to the present time, in a distinct order, under the heads of Civil Judicature, Criminal Judicature, and Police. I shall then state concisely and generally the jurisdiction of the Courts, and the laws administered therein; and finally, I shall set forth, by way of summary, the actual constitution of the Courts

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zance of, and to punish, will be found elaborately set forth in the Appendix B. No. 2, to the First Report of the Commissioners appointed to consider the reform of the Judicial establishments, &c., in India. London, 1856.

of Justice, and of the establishments of Police, as now existing in each Presidency.

The limits of this treatise will not admit of entering into a full detail of the various modifications and alterations above alluded to. I shall therefore confine myself to those which are the most material, before proceeding to the summary account of the present systems.

1. Bengal.

(1) Rise and Progress of the Adawlut System.

The great Lord Clive, whose transcendant abilities brought the Empire of India within his grasp, secured that Empire to his country by obtaining the grant of the Dewanny for the East-India Company at the hands of the pageant Moghul Emperor. Previously to this the Nawáb Najm ad-Daulah, on his accession to the Masnad after the death of his father, Núr Ja'far 'Alí Khán, had entrusted the Súbahdárí to the management of a Náïb, or deputy, to be appointed by the advice and recommendation of the English; but the Firmán which conferred in perpetuity the Dewanny authority over the Provinces of Bengal, Behar, and Orissa on the East-India Company, constituted them the masters and virtual sovereigns of those Provinces; the office of Dewan implying not merely the collection of the revenue, but the administration of civil justice.

This Firmán was granted on the 12th of August 1765, and was accompanied by an imperial confirmation of all the territories previously held by the East-India Company under grants from Kásim 'Alí Khán and Ja'far 'Alí Khán, within the nominal limits of the Empire of the descendants of Tímúr. The Nizamut, or administration of criminal justice, was, at the same time, conferred upon the Nawáb Najm ad-Daulah. The Dewanny grant was further recognized, by an agreement dated the 30th of September in the same year, by the Nawáb, who formally accepted his dependent situation by consenting to

receive a fixed stipend of fifty-three laks of rupees[1] for the support of the Nizamut, and for the maintenance of his household and his personal expenses.

In the month of April in the following year the Nawáb held his annual Darbár for the collection of the revenue. The Prince sate as Názim; and Lord Clive, the President of the Council of Fort William, officiated for the first time as Dewan. From this period the Nizamut, as well as the Dewanny, was exercised by the British Government in India through the influence possessed by the English over the Náïb Názim; the Nizamut comprising the right of arming and commanding troops, and the management of the whole of the Police of the country, as well as of the administration of criminal justice.

For some time subsequent to this assumption of power it was not, however, thought prudent, either by the authorities at home or in India, to entrust the administration of justice or the collection of the revenue to the European servants of the Company; their ignorance of the civil institutions and internal arrangements of the country rendering them, with a few bright exceptions, totally unqualified for either task. Accordingly, the administration of the provinces included in the Dewanny grant was for the present left in the hands of the native officers, an imperfect controul being exercised over them by an English Resident at the Court of the Nawáb, and by the Chief of Patna, who superintended the collections of Behar. The Zamíndárí lands of Calcutta, and the districts of Burdwán, Midnapúr, and Chittagong, as well as the Twenty-four Pergunnahs, which had been ceded to the East-India Company by previous grants from the Nawábs, and which had been confirmed to them by the Emperor's Firmán in August 1765, had been placed under the management of the covenanted servants of the Company

[1] Copies of these Firmáns and Agreements will be found in the Appendices to Bolt's Considerations on Indian Affairs, 4to. Lond. 1772; and Verelst's View of the Rise and Progress of the English Government in Bengal, 4to. Lond. 1772.

ever since their cession, and this was continued; but at the same time the internal administration was carried on without alteration, as in other parts.

In 1769, when Verelst was Governor of Bengal, Supervisors were appointed for the superintendence of the native officers; and they were furnished with detailed instructions to inquire into the history, existing state, produce and capacity of the provinces, the amount of the revenues, the regulations of commerce, and the administration of justice; they were likewise directed to make reports thereon to the Resident at the Darbár and the Chief of Patna.

These inquiries furnished ample evidence of abuses of every kind. Extortion and oppression on the part of the public officers, and fraud and evasion of the payment of just dues on the part of the cultivators, prevailed throughout our provinces; and with respect to the administration of Justice, it was remarked in a Letter from the President in Council at Fort William, that "the regular course was everywhere suspended; but every man exercised it who had the power of compelling others to submit to his decision."[1] Councils with superior authority were established at Moorshedabad and Patna, in the following year, to superintend the administration of justice and the collection of the revenue, and to exercise the powers before vested in the Resident and Chief.

The glaring abuses above mentioned had continued for seven years unremedied, when, in the year 1772, the Court of Directors announced to the Government of Bengal their intention "to stand forth as Dewân, and, by the agency of the Company's servants, to take upon themselves the entire care and management of the revenues."[2]

Warren Hastings, who had already acquired a considerable reputation by his talents, and who had served with great credit in Bengal during the administration of Vansittart, and

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[1] Fifth Report from the Select Committee of the House of Commons, 1812, p. 5.

[2] Ibid.

since then on the coast of Coromandel, was now Governor, he having been appointed to that important office in the preceding year. In order to carry into effect their determination, the Court of Directors appointed a Committee, consisting of the Governor and four Members of Council; and Warren Hastings and his coadjutors drew up a Report, comprising plans for the more effective collection of the revenue and the administration of justice.

This Report, which bears witness throughout to the soundness of the views entertained by the illustrious statesman who presided, gave a detailed account of the Muhammadan Law Courts; and after animadverting strongly on their inefficiency, proceeded to set forth a plan for the more regular administration of civil and criminal justice, stated to have been framed so as to be adapted "to the manners and understandings of the people and exigencies of the country, adhering, as closely as possible, to their ancient usages and institutions."[1]

This plan was adopted by the Government on the 21st of August 1772; and although the constitution of the Courts was shortly afterwards completely altered, many of the rules which it contained were, and are still, preserved in the Bengal Code of Regulations.

In pursuance of the plan of the Committee, the Exchequer and the Treasury were removed from Moorshedabad to Calcutta, and a "Board of Revenue," as it was styled, consisting of the Governor and Council, with an establishment of native officers, was constituted at the Presidency, for the management, not only of the collections, but many of the most important duties of the municipal Government. The Supervisors appointed under Verelst's system became "Collectors," one of whom presided over each considerable district, assisted by a native officer, and the lands were leased to the highest bidder

[1] Proceedings of the Governor and Council at Fort William respecting the administration of justice amongst the Natives of Bengal, p. 4, 4to. London, 1774.

who could produce the requisite security for rent, for a period of five years. In each Collectorate were established Mofussil Dewanny Adawluts, or Provincial Civil Courts for the administration of civil justice,[1] which were presided over by the Collectors on the part of the Company, in their capacity of King's Dewans, attended by the provincial Dewans and the other officers of the Collector's Court. These took cognizance of "all disputes concerning property, real or personal, all causes of inheritance, marriage, and cast, and all claims of debt, disputed accounts, contracts, and demands of rent;"[2] excepting, however, questions relating to the succession to Zamíndárí and Talookdárí property, which were reserved for the decision of the Governor and Council.[3] A Criminal Court, styled the Foujdary Adawlut was also established in each district, for the trial of "murder, robbery, and theft, and all other felonies, forgery, perjury, and all sorts of frauds and misdemeanours, assaults, frays, quarrels, adultery, and every other breach of the peace or violent invasion of property."[4] In these Criminal Courts the Kázi or Mufti of each district was directed to sit to expound the law, and determine how far delinquents were guilty of any breach thereof; but it was also provided that the Collector should attend to the proceedings, and see that the decision was passed in a fair and impartial manner, according to the proofs exhibited.[5] Two Superior Courts were established at the chief seat of Government, to be called the Dewanny Sudder Adawlut and the Nizamut Sudder Adawlut;[6] the former to be presided over by the President and Members of Council, assisted by native officers,[7] and to be a Court of Appeal in all cases where the disputed amount exceeded 500 rupees;[8] and the latter to be presided over by a chief officer, to be called the Dárógháh Adawlut, appointed on the part of the Názim, assisted by native

[1] Plan, Rule I. [2] Plan, Rule II. [3] Plan, Rule II.
[4] Plan, Rule II. [5] Plan, Rule IV. [6] Plan, Rule V.
[7] Plan, Rule VI. [8] Plan, Rule XXIV.

In the year 1774 the European Collectors were recalled, and native 'Ámils appointed instead; and at the same time the superintendence of the collection of the revenue was vested in six Provincial Councils appointed for the respective divisions of Calcutta, Burdwán, Dacca, Moorshedabad, Dinajpúr, and Patna. The administration of civil justice was transferred from the Collectors to the 'Ámils, from whose decisions an appeal lay in every case to the Provincial Councils, and thence, under certain restrictions, to the Governor and Council as the Sudder Adawlut.

After Warren Hastings had presided in the Chief Criminal Court established at Calcutta for about eleven months, he felt himself obliged, from the multiplicity of business, to resign the situation: and accordingly, in October 1775, the Nizamut Adawlut was removed from Calcutta and established at Moorshedabad, under the superintendence of Muhammad Rizá Khán, who was invested with the office of Náïb Názim at the recommendation of the Governor-General, and Foujdárs were appointed in the several districts for apprehending and bringing to trial all offenders against the public peace.[1]

These arrangements for the administration of justice remained in force, with scarcely any change, until the year 1780, when the Calcutta Government passed Regulations which contained the following provisions: The jurisdiction of the Provincial Councils was confined exclusively to revenue matters;[2] and in each of the six great divisions above mentioned was established a Court of Dewanny Adawlut, presided over by a covenanted servant of the East-India Company, styled Superintendent of Dewanny Adawlut,[3] whose jurisdiction extended over all claims of inheritance to Zamíndárís, Talookdárís,

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[1] Fifth Report from the Select Committee of the House of Commons, 1812, p. 6. Bengal Judicial Regulation, XXVI. 1790, Preamble. In the Fifth Report the establishment of Foujdárs and Thanadárs is stated to have taken place in 1774.

[2] Bengal Judicial Regulation, I. 1780, s. 8. [3] Jud. Reg. I. 1780, s. 1.

and other real property or mercantile disputes,[1] and all matters of personal property, with the exception of what was reserved to the Provincial Courts, who were still to decide on all cases having relation to revenue, as well as on all demands of individuals for arrears of rent, and on all complaints from tenants and cultivators of undue exaction of revenue.[2] The decision of the Superintendent was to be final in all cases where the sum in dispute did not exceed 1000 rupees, but above that sum an appeal lay to the Sudder Dewanny Adawlut.[3]

At this time the many avocations of the Governor-General and Council compelled them to give up sitting in the Sudder Dewanny Adawlut, and a separate Judge was accordingly appointed to preside in that Court. The person selected for this high office was Sir Elijah Impey, and his acceptance of it was one of the principal charges from which that much-calumniated Judge so triumphantly cleared himself. He has been accused, by an eminent writer, of having accepted the office as a bribe; but whilst his legal attainments and position sufficiently account for his selection without having recourse to that odious supposition, the self-denial, so rare in India in those days with which he "declined appropriating to himself any part of the salary annexed to the office of Judge of the Sudder Dewanny Adawlut until the pleasure of the Lord Chancellor should be known,"[4] of itself sufficiently refutes an accusation couched in terms as virulent and unfair, as the statements it contains are themselves partial and unfounded upon fact.

Sir Elijah, in fulfilment of the duties which devolved upon him by virtue of his new office, and without any remuneration, prepared a series of Regulations for the guidance of the Civil Courts, which he submitted to Government in November 1780. They were approved of by that body, and were afterwards in-

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[1] Jud. Reg. I. 1780, s. 5.

[2] Jud. Reg. I. 1780, ss. 30, 31.

[3] Jud. Reg. I. 1780, s. 3.

[4] Extracted from Bengal Consultations in the East-India House, quoted in the Memoirs of Sir Elijah Impey, by his Son, p. 221, 8vo. Lond. 1846.

corporated, with additions and amendments, in a revised Code, passed in 1781, which was translated into the Persian and Bengálí languages.[1] Under these Regulations, all civil causes were made cognizable by the Dewanny Adawluts, which had been increased from six to eighteen, for the sake of rendering the jurisdictions of the individual Judges less inconveniently extensive.[2] The functions of the Judges of these Courts were entirely severed from the revenue department, four districts being, however, excepted, where, for local reasons, the functions of Civil Judge and Collector were exercised by the same persons, but expressly in distinct capacities, and, as Civil Judge, wholly independent of the Board of Revenue, and subject only to the authority of the Governor-General in Council and of the Judge of the Sudder Dewanny Adawlut.[3] An appeal lay from the decisions of the Provincial Dewanny Adawluts, in cases where the amount in dispute exceeded 1000 rupees, to the Sudder Dewanny Adawlut.[4]

In the year 1781 the Foujdárs, instituted in 1775, were abolished, and the Police jurisdiction was transferred to the Judges of the Dewanny Adawluts, or in some cases, to the Zamíndár, by special permission of the Governor-General in Council. The Judges, however, were not empowered to punish, but merely to apprehend offenders, whom they were at once to forward to the Dáróghah of the nearest Foujdary Court; and the Judge of the Dewanny Adawlut, the Dáróghah of the Nizamut Adawlut, and the Zamíndár were to exercise a concurrent jurisdiction for the apprehension of robbers and disturbers of the public peace.[5] A separate department was established at the Presidency, under the immediate control of the Governor-General, to receive reports and returns of the

[1] The Persian translation by Mr W Chambers was printed in 1782 The Bengálí version by Mr. Duncan was printed in 1785.

[2] Jud. Reg III. 1781, s. 1.

[3] Jud Reg VI 1781, ss. 2—12.

[4] Jud. Reg. VI. 1781, ss. 53 74

[5] Jud Reg XX. 1781, ss 6—8.

proceedings of the Foujdary Courts, and lists of prisoners apprehended and convicted by the authorities in the provinces.[1] To arrange these records, and to maintain a check on all persons entrusted with the administration of criminal justice, an officer was appointed, to act under the direction of the Governor-General, with the title of Remembrancer of the Criminal Courts.[2] The ultimate decision still rested with the Náïb Názim at Moorshedabad. In the same year the Provincial Councils were dissolved, and a Committee of Revenue established, to be entrusted with the charge and administration of all revenue matters, to be vested with the powers of the Provincial Councils, and to be under the controul of the Governor-General and Council.[3]

In 1782 the Court of Directors sent out orders to the Governor-General in Council to resume the superintendence of the Sudder Dewanny Adawlut, which Court had been constituted in the preceding year a Court of Record, by the 21st Geo. III. c. 70, s. 21: and it may be remarked, that thus, although it is generally looked upon as the principal Court of the Honourable East-India Company, it is in reality a Queen's Court. This Statute declared the judgments of the Governor-General and Council in appeal from the Provincial Courts in civil causes to be final, except in civil suits where the amount in dispute was of £5000 and upwards, when an appeal lay to the King in Council.[4]

The progress of the judicial system cannot be traced for the next four years, but no material alteration seems to have taken place.[5]

In the mean time Parliament again interfered, and an Act was passed in 1784, *viz.* the 24th Geo. III. c. 25, to regulate

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[1] Jud. Reg. XX. 1781, ss. 11, 12.
[2] Jud. Reg. XX. 1781, s. 14.
[3] Revenue Reg. I. 1781.
[4] See *infra* Chapter IV. on Appeals to England.
[5] Leith's History of the Rise and Progress of the Adawlut System, p. 24. 8vo. Lond. 1822, 2d edit.

the affairs of the East-India Company and of the British possessions in India. Section 39 of this Statute, which may be said to form the basis of the present constitution of British India, commanded the Company to institute inquiries into the complaints that had prevailed that divers Rájahs, Zamíndárs, Polygars, Talookdárs, and other native landholders within the British territories in India, had been unjustly deprived of, or compelled to abandon and relinquish, their respective lands, jurisdictions, rights, and privileges, or that the tributes, rents, and services required of them had become oppressive; and these grievances, if founded upon truth, were directed to be effectually redressed, in such manner as should be consistent with justice and the laws and customs of the country, and permanent rules to be settled and established upon principles of moderation and justice, according to the laws and constitution of India, by which their tributes, rents, and services should be rendered and paid.

This Act also established the Board of Commissioners for the affairs of India; and the attention of that body, and of the Court of Directors, was immediately turned to the important objects comprised in the above requisition.

The Marquis Cornwallis was selected to superintend the measures determined upon, and in the year 1786 he proceeded to India as Governor-General, carrying with him detailed instructions from the Court of Directors, which were dictated by a wise and considerate spirit, stating "that they had been actuated by the necessity of accommodating their views and interests to the subsisting manners and usages of the people, rather than by any abstract theories drawn from other countries or applicable to a different state of things."

In compliance with these instructions, Lord Cornwallis directed the re-union of the functions of civil and criminal justice with those of the collection and management of the revenue; and the Dewanny Adawluts were accordingly, in the year 1787, placed under the superintendence of the Collectors.[1] District

[1] Jud. Reg. VIII. 1787, s. 2.; Rev. Reg. XX. 1787.

Courts were established in Moorshedabad, Dacca, and Patna, presided over by Judges and Magistrates who were not Collectors, that office being unnecessary, as their jurisdiction was circumscribed by the limits of those cities.[1] The proper Collectors' or Revenue Courts were kept distinct from the Dewanny Adawluts, although presided over by the same persons.[2] From the latter, appeals were allowed, within certain limits, to the Governor-General and Council, in their capacity of Judges of the Sudder Dewanny Adawlut;[3] and the decisions of the Revenue Courts were appealable, first to the Board of Revenue, and thence to the Governor-General in Council.[4] The Collectors also were appointed to act as Magistrates[5] in apprehending offenders against the public peace; but with the exception of the chastisement of petty offences, they had no power of trial or punishment, and were directed to deliver up their prisoners for that purpose to the Muhammadan criminal officers,[6] who were not to be interfered with[7] beyond the influence possessed by the British Government in recommending the mitigation of punishments of unnecessary cruelty.

The administration of criminal justice remained in the hands of the Náïb Názim until the end of the year 1790, when the Governor-General, convinced of the inefficacy of the different plans which had been adopted and pursued from the year 1772, declared that, with a view to ensure a prompt and impartial administration of the criminal law, and in order that all ranks of people might enjoy security of person and property, he had resolved in Council to resume the superintendence of the administration of criminal justice throughout the provinces.[8] Accordingly the Nizamut Adawlut was again removed from

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[1] Jud. Reg. VIII. 1787, ss. 2, 11.; Rev. Reg. XX. 1787.
[2] Jud. Reg. VIII. 1787, s. 19.; Rev. Reg. XXIII. 1787, s. 1.
[3] Jud. Reg. VIII. 1787, ss. 53—72.
[4] Rev. Reg. XXIII. 1787, s. 42.
[5] Jud. Reg. XXII. 1787, s. 1.; Rev. Reg. XX. 1787.
[6] Jud. Reg. XXII. 1787, ss. 3—5. [7] Jud. Reg. XXII. 1787, s. 14.
[8] Jud. Reg. XXVI. 1790, Preamble.

Moorshedabad to Calcutta, and was appointed to consist of the Governor-General and members of the Supreme Council, assisted by the Kází al Kuzát and two Muftís.[1] This Court was at once a Court of Criminal Appeal and a Board of Police, as it took cognizance, not only of all judicial matters, but of the general state of the Police throughout the country.[2] All persons charged with crimes and offences were to be apprehended by the Magistrates, and an inquiry instituted; when, if the charge proved groundless, they were to be acquitted and dismissed; but if the crime were proved, they were to be admitted to bail, except in cases of murder, theft, burglary, or robbery; and in all proved cases they were to be committed for trial by the Court of Circuit. Trivial cases of assault, abuse, or affray were punishable by the Magistrates by limited flagellation or imprisonment.[3] Four Courts of Circuit, superintended respectively by two Judges, who were to be covenanted servants of the Company, assisted by Kázís and Muftís as Assessors, were at the same time established, for the trial of such crimes as were not punishable by the Magistrates.[4] These Judges were required to hold a general gaol delivery every six months,[5] and, in capital cases, to report their proceedings to the Nizamut Adawlut at Calcutta for confirmation.[6] In the Regulations for these Courts of Circuit we meet, for the first time, with the provision, that in trials for murder the doctrine of Abú Yúsuf and Muhammad, requiring the evidence of criminal intention alone, was to be applied in regulating the Fatwa of the law officers, in opposition to that of Abú Hanífah,[7] which required the actual employment of an instrument of blood: the relations of a murdered person were also debarred from pardoning the offender.[8]

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[1] Jud. Reg. XXVI. 1790, ss. 41, 42.
[2] Jud. Reg. XXVI. 1790, s. 52.
[3] Jud. Reg. XXVI. 1790, ss. 3—6.
[4] Jud. Reg. XXVI. 1790, ss. 20. 24.
[5] Jud. Reg. XXVI. 1790, s. 31.
[6] Jud Reg. XXVI. 1790, s. 32.
[7] Jud. Reg. XXVI. 1790, s. 33. This distinction of doctrine will be explained in a subsequent section on the Muhammadan Law, Chap. V. *infra*.
[8] Jud. Reg. XXVI. 1790, s. 34.

In 1791 the Judges of the [illegible] to transmit to the Nizamut [illegible] disapproved of the proceedings [illegible] of the law officers.[1] In the same [illegible] labour were substituted for mutilation, and the Court of Nizamut Adawlut was empowered to pass sentence of death, instead of granting Díyat to the heirs.[2]

In 1792 the rule that the refusal to prosecute by the relatives of a murdered person was to bar the trial of the offender was abrogated.[4] In the same year the Government took the management of the Police entirely out of the hands of the Zamíndárs and farmers of land, who were no longer to be held responsible for robberies committed in their estates or farms, and placed it under the controul of the Magistrates, who were required to divide their respective Zillahs into Police jurisdictions of twenty miles square, to be superintended by a Dáróghah and a suite of Police officers, to be paid by the Government.[5]

(2) System of 1793.

The administration of civil justice appears to have remained materially the same from 1787 until 1793, when Lord Cornwallis introduced his celebrated system of judicature, and formed the Regulations into a regular Code, which is the basis of the Regulation Law prevalent throughout India at the present time.

The earliest alteration made by this system was the vesting the collection of revenue and the administration of justice in separate officers; and for this were assigned, amongst others, the following reasons: "It is obvious, that if the Regulations for assessing and collecting the public revenue are infringed, the revenue officers themselves must be the aggressors, and

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[1] Jud. Reg. XXXIII. 1791, s. 3.
[2] Jud. Reg. XXXIV. 1791.
[3] Jud. Reg. XXXVII. 1791, s. 3.
[4] Jud. Reg. XL. 1792, s. 1.
[5] Jud. Reg. XLIX. 1792.

that individuals who have been aggrieved by them in one capacity can never hope to obtain redress from them in another. Their financial occupations equally disqualify them from administering the laws between the proprietors of land and their tenants."[1] The Mál Adawluts, or Revenue Courts were accordingly abolished, the Revenue Board was divested of its powers as a Court of Appeal, and all causes hitherto tried by the revenue officers were transferred to the Dewanny Adawluts,[2] which were now established in each provincial division, and presided over respectively by a covenanted servant, in whose person were united the powers of Judge and Magistrate, and who also had the management of the Police within the limits of his division.

The Courts of Civil Judicature established under Lord Cornwallis' system formed a regular gradation of Courts of Appeal. The lowest in the series were the Courts of the Native Commissioners, who were to hear and decide in the first instance, where the cause of action did not exceed fifty rupees.[3] These Native Commissioners were of three denominations, termed Ameens or Referees, Sálisán or Arbitrators, and Moonsiffs or Native Justices;[4] and from their decisions an appeal lay to the Zillah or City Judge.[5] The second description of Courts were those of the Registers, who were covenanted servants attached to the Zillah and City Courts, and who, in order to prevent the time of such Courts being occupied by the trial of petty suits, were, when authorised by the Zillah and City Judges, empowered to try and decide causes for an amount not exceeding 200 rupees. The decrees passed by a Register were not valid unless revised and countersigned by the Judge.[6] Next in order were the Zillah and City Courts, twenty-six in number, which were each presided over by a single Judge, being a covenanted servant, assisted by Hindú

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[1] Reg. II. 1793, Preamble.
[2] Reg. II. 1793, s. 2.
[3] Reg. XL. 1793, s. 2.
[4] Reg XL. 1793, s 5.
[5] Reg. XL. 1793, s. 20.
[6] Reg. XLII. 1793, s.6.

and Muhammadan law officers and a Register, having cognizance of all civil suits in the first instance:[1] their decisions were not final, and were appealable in all cases to the Provincial Courts.[2] The Provincial Courts of Appeal, which were four in number, were the fourth in the ascending scale, and were each presided over by three European Judges. These were established, one in the vicinity of Calcutta, one at the city of Patna, one at Dacca, and the fourth at Moorshedabad:[3] they were provided respectively with a Register, a Kází, a Muftí, and a Pandit, and with a competent number of native ministerial officers. The decision of the Provincial Courts was final in suits where the disputed amount did not exceed the sum of 1000 rupees: above that sum, an appeal lay to the Sudder Dewanny Adawlut.[4] The Sudder Dewanny Adawlut was established at the Presidency, and consisted of the Governor-General and Members of the Supreme Council.[5] This Court took cognizance of appeals from the Provincial Courts,[6] and its judgment was final in all civil suits whatever.[7] It was also empowered to receive any original suit cognizable in the Zillah Courts, provided the Zillah Judge had refused or omitted to proceed in it.[8] The Sudder Dewanny Adawlut was also authorised to admit appeals from the decisions of the Provincial Councils, or of the Committee or Board of Revenue.[9]

Criminal justice was administered, under the new system introduced in 1793, in the following manner. The Zillah and City Judges were constituted Magistrates, their jurisdiction being co-extensive with their jurisdiction as Judges.[10] The

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[1] Reg. III. 1793, ss. 2, 3. 8.
[2] Reg. III. 1793, s. 20.
[3] Reg. V. 1793, s. 2.
[4] Reg. V. 1793, ss. 23. 25, 26. 30.
[5] Reg. VI. 1793, s. 2.
[6] Reg. VI. 1793, s. 10.
[7] Reg. VI. 1793, s. 29. This Regulation seems to have been made irrespective of the appeal to the King in Council under the 21st Geo. III. c. 70, s. 21; the defect was, however, subsequently remedied by Reg. XVI. of 1797. See *infra* Chapter IV. on Appeals to England.
[8] Reg VI. 1793, s. 4.
[9] Reg. VI. 1793, s. 9.
[10] Reg. IX. 1793, ss. 2, 3.

Magistrates and their assistants were empowered to apprehend murderers, robbers, thieves, housebreakers, and persons charged with crimes and misdemeanours;[1] and in certain cases, as abusive language, calumny, assaults, and affrays, were authorised to pass final sentence, subject, however, to the controul of the Courts of Circuit and Nizamut Adawlut, and to punish such offenders, within certain limits, by corporal chastisement, fine not to exceed 200 rupees, or imprisonment for a term not exceeding fifteen days.[2] British subjects charged with offences, and residing in the provinces, were to be apprehended and sent for trial to the Supreme Court at Calcutta.[3] Four Courts of Circuit were established, to consist of the Judges of the Provincial Courts of Appeal, and the Kázi and Mufti attached to those Courts.[4] These were Courts of half-yearly Gaol Delivery for certain Zillahs, and monthly for the cities of Patna, Dacca, and Moorshedabad, and certain other Zillahs.[5] These Courts were empowered to pass sentence of death or imprisonment for life, but were to transmit the proceedings to the Nizamut Adawlut[6] to await the final sentence of that Court, which being sent back to the Judges, they were to issue an immediate warrant for execution.[7] The Nizamut Adawlut, or chief Criminal Court, was held at Calcutta, and consisted of the Governor-General and Members of the Council, assisted by the Kází al-Kuzát and two Muftís.[8] This Court had cognizance of all matters relating to the administration of Criminal Justice and the Police, and was authorised to exercise the same powers as were vested in it when it was superintended by the Náïb Názim.[9] The sentences of the Nizamut Adawlut were, in all cases, to be final; but the Governor-General in Council had a power of pardoning or commuting the punishment awarded.[10] All these Courts administered

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[1] Reg. IX. 1793, s. 4.
[2] Reg. IX. 1793, s. 19.
[3] Reg. IX. 1793, ss. 40. 44, 45.
[4] Reg. IX. 1793, s. 78.
[5] Reg. IX. 1793, ss. 72, 73.
[6] Reg. IX. 1793, ss. 8, 9.
[7] Reg. IX. 1793, ss. 31. 33. 36.
[8] Reg. IX. 1793, s. 58.
[9] Reg. IX. 1793, ss. 66, 67.
[10] Reg. IX. 1793, s. 79.

the Muhammadan criminal law as modified by the Regulations.

The Police Regulations introduced in the year 1793 were a re-enactment, with some amendments, of those passed in 1792, already alluded to. The Police was declared to be under the exclusive charge of officers appointed by Government; and the landholders and farmers were prohibited from keeping up their establishments of Police, and exempted from responsibility for robberies committed within their estates, unless their connivance were proved;[1] the division into Police Jurisdictions was retained, and they were each to be guarded, as before, by a Dárógháh, who was directed to maintain a suite of Police-officers at the expense of Government, and to apprehend and send to the Magistrates all persons charged with crimes and misdemeanours, and vagrants.[2] The Magistrates and Police-officers of the cities were invested with concurrent authority in their respective jurisdictions, and with those of the Zillahs;[3] and the cities were to be divided into wards, to be guarded by Dárógháhs, who were to be under the immediate inspection, and subject to the authority of, the Kútwáls of each city.[4]

The reformed system of 1793, of which I have thus attempted a concise description, constitutes the main fabric of the actual administration of justice at the present day, not only in Bengal, Behar, and Orissa, but throughout British India. Various modifications and improvements were gradually introduced; and nowhere has the humane policy of the Government been more distinctly shewn, or more thoroughly successful, than in the increased employment of the Natives in judicial offices, and the confidence placed in them by extending the jurisdiction of the Courts over which they are appointed to preside.

I shall now give a rapid sketch of the more material alterations that have taken place in the judicial system of Bengal

[1] Reg. XXII. 1793, ss. 1—3.
[2] Reg. XXII. 1793, ss. 4—12.
[3] Reg. XXII. 1793, s. 25.
[4] Reg. XXII. 1793, s. 26.

since the year 1793; and for greater clearness I shall treat of the several departments of Civil and Criminal Judicature and the Police under distinct heads.

(3) Alterations since 1793.

(*a*) *Civil Judicature.*

The first alteration of any importance was the giving a final power of decision to the Registers in suits not exceeding 25 rupees in value, above which amount an appeal lay to the Provincial Courts.[1] In the following year the Zillah and City Courts were also empowered to decide finally on all appeals from their Registers or the Native Commissioners.[2]

The jurisdiction of the Provincial Courts was extended in the year 1797, when they were authorised to take cognizance of, and decide finally, suits to the value of 5000 rupees, above which sum their decisions were appealable to the Sudder Dewanny Adawlut.[3] In the same year[4] rules were also enacted for the conduct of appeals to the King in Council from the Sudder Dewanny Adawlut, requiring that the petition of appeal should be presented within six months, and the judgment appealed against should amount to £5000 sterling.

A material alteration took place in the constitution of the Sudder Dewanny Adawlut during the administration of the Marquis of Wellesley in the year 1801, when it was made to consist of three Judges, to be selected from the covenanted servants of the Company.[5] The number of Judges was increased in the year 1811, and the Court declared thenceforth to consist of a Chief Judge and of as many Puisne Judges as the Governor-General in Council might deem necessary.[6] In the year 1801 a summary appeal, whatever might be the value at issue, was directed to be cognizable by the Sudder Dewanny

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[1] Reg. VIII. 1794, ss. 6, 7.
[2] Reg. XXXVI. 1795, s. 4.
[3] Reg. XII. 1797, s. 2.
[4] Reg. XVI. 1797.
[5] Reg. II. 1801, ss. 2, 3.
[6] Reg. XII. 1811, s. 2.

Adawlut, the Provincial Courts, or the Courts of the Zillah and City Judges, where the Courts immediately below such Courts respectively had refused to admit a regular appeal on the ground of delay, informality, or other default in preferring it.[1]

In 1803 Head Native Commissioners were appointed in the cities and zillahs, for the trial of suits referred to them by the Zillah Judges, not exceeding 100 rupees,[2] and the jurisdiction of the Registers was increased to 500 rupees, but at the same time their power of final decision was abolished.[3] The decisions of the Zillah and City Judges were declared to be final in all appeals from the Native Commissioners;[4] but an appeal was directed to lie to the Provincial Courts from all decisions of the Zillah and City Judges in causes tried by them in the first instance, that is to say, without a previous trial by their Registers or the Native Commissioners.[5] The Provincial Courts were also empowered to admit a second or special appeal from all decrees of the Zillah and City Judges in appealed cases from the decisions of the Native Commissioners or Registers, in cases in which a regular appeal would not lie, if such decrees should appear to be erroneous or unjust, or the nature of the cause should be of sufficient importance to require further investigation.[6] Assistant Zillah and City Judges were appointed in the same year.[7]

In the year 1805 the Sudder Dewanny Adawlut was invested with a like power of receiving special appeals from the decrees of the Provincial Courts in similar cases not open to a regular appeal.[8] In the same year the Provincial Courts were authorised to admit a summary appeal in cases where the Zillah and City Courts refused to admit or hear original suits on the ground of default, delay, or other informality.[9]

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[1] Reg. II. 1801, ss. 8, 9.
[2] Reg. XVI. 1803, s. 26.
[3] Reg. XLIX. 1803, s 6.
[4] Reg. XLIX. 1803, s. 22.
[5] Reg. XLIX. 1803, s. 23.
[6] Reg. XLIX. 1803, s. 24.
[7] Reg. XLIX. 1803, s. 2.
[8] Reg. II. 1805, s. 10.
[9] Reg. II. 1805, s. 11.

In 1808 the Zillah and City Courts were restricted in their original jurisdiction to suits of the value of 5000 rupees, over which sum they were to be originally cognizable in the Provincial Courts.[1]

In the year 1813, by the Statute 53rd Geo. III. c. 155, s. 107, British subjects residing, trading, or holding immoveable property in the provinces, were made amenable to the Company's Courts in civil suits brought against them by Natives, with, however, a right of appeal to the Supreme Court at Fort William, in cases where an appeal otherwise lay to the Sudder Dewanny Adawlut.

In 1814 the office of Assistant Judge was abolished;[2] and in the same year Moonsiffs and Sudder Ameens were appointed, the former to try causes not exceeding 64 rupees,[3] and the jurisdiction of the latter extending to 150 rupees in original suits referred to them by the Zillah and City Judges. An appeal lay to the Zillah and City Judges, whose decision was final.[4] The Sudder Ameens were also authorised to try appeals from Moonsiffs, referred to them by the Zillah and City Judges, and in all such referred appeals the decisions of the Sudder Ameens were final.[5] But neither Moonsiffs nor Sudder Ameens were to take cognizance of any suits in which a British European subject, or an European foreigner, or an American, was a party.[6] An appeal lay to the Zillah and City Judges from all decisions in original suits passed by Moonsiffs, Sudder Ameens, and Registers.[7] The Registers were empowered, in this year, to decide original suits referred to them by the Zillah and City Judges, of the value of 500 rupees; in such suits an appeal lay to the Zillah and City Courts.[8] The Registers, when specially empowered, were like-

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[1] Reg. XIII. 1808, ss. 2, 3.
[2] Reg. XXIV. 1814, s. 3.
[3] Reg. XXIII. 1814, s. 13.
[4] Reg. XXIII. 1814, s. 68; Reg. XXIV. 1814, s. 7.
[5] Reg. XXIII. 1814, s. 75; Reg. XXIV. 1814, s. 7.
[6] Reg. XXIII. 1814, ss. 13. 68; Reg. XXIV. 1814, s. 7.
[7] Reg. XXIV. 1814, s. 6.
[8] Reg. XXIV. 1814, s. 8.

wise authorised to try suits referred to them by the Zillah and City Judges, above the value of 500 rupees; but such referred suits were appealable to the Provincial Courts.[1] They were also, when especially empowered, authorised to try suits in appeal from decisions of Moonsiffs and Sudder Ameens referred to them by the Zillah and City Judges, and their decision in such referred appeals was final.[2] The Zillah and City Courts were formally authorised to try any civil suits regularly instituted in their Courts, not exceeding 5000 rupees in value.[3] In the same year more definite Rules were enacted with respect to the admission of special appeals, which were directed to lie to the Superior Courts only when the judgment should appear to be inconsistent with precedent or some Regulation, or with the Hindú or Muhammadan law, or other law or usage which might be applicable, or unless it should involve some point of importance not before decided by the Superior Courts.[4] Summary appeals were also directed to lie from the Provincial Courts to the Sudder Dewanny Adawlut, from the Zillah and City Courts to the Provincial Courts, and from the Registers or Sudder Ameens to the Zillah and City Courts, in cases where the lower Courts had respectively refused to admit or investigate any suit, original or in appeal, regularly cognizable by them, on the ground of delay, informality, or other default.[5]

All decisions of the Provincial Courts, which had been increased from four to six in number,[6] and which, as has already been mentioned, had been empowered to decide finally in cases of the value of 5000 rupees, whether original or in appeal from Zillah or City Judges, were, in 1814, declared to be appealable to the Sudder Dewanny Adawlut.[7] Early in this year the number of Judges in these Courts had been augmented from three to four.[8] In the same year an original jurisdiction was

[1] Reg. XXIV. 1814, s. 9.
[2] Reg. XXIV. 1814, s. 9.
[3] Reg. XXIV. 1814, s. 6.
[4] Reg. XXVI. 1814, s. 2.
[5] Reg. XXVI. 1814, s. 3.
[6] Reg. IX. 1795, s. 2, and Reg. IV. 1803, s. 2.
[7] Reg. XXV. 1814, s. 5.
[8] Reg. V. 1814, s. 2.

given to the Sudder Dewanny Adawlut in suits for the value of 50,000 rupees, when such suits could not be conveniently heard in the Provincial Courts.[1]

In the year 1817 the original jurisdiction of the Zillah and City Courts was extended to 10,000 rupees,[2] and an appeal was directed to lie to the Provincial Courts from their decisions in all suits, whether original or appealed from the Courts of the Registers. In the same year it was directed that special appeals should be allowed where decrees passed by one or more Courts were inconsistent with each other.[3]

Several extensions and definitions of the grounds for the admission of special appeals which it is unnecessary to specify, had been at various times enacted, when, in 1819, it was further declared to be competent to the Provincial Courts and to the Sudder Dewanny Adawlut to admit a second or special appeal whenever, on a perusal of the decree of a lower Court from whose decision the special appeal was desired, there might appear strong probable ground, from whatever cause, to presume a failure of justice.[4] This provision was, however, subsequently rescinded, and the Courts were directed to conform to the former rules with regard to the admission of second or special appeals.[5]

In the year 1821 the number of Moonsiffs was increased, and their jurisdiction extended to suits preferred to them against Native inhabitants of their jurisdictions, of the value of 150 rupees.[6] Sudder Ameens were at the same time, when specially empowered, authorised to take cognizance of claims originally preferred to them, or referred by the Zillah and City Judges, up to the amount of 500 rupees. An appeal lay to the Zillah and City Judges in all such referred suits above the value of 150 rupees.[7]

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[1] Reg. XXV. 1814, s. 5.
[2] Reg. XIX. 1817, s. 2.
[3] Reg. XIX. 1817, s. 7.
[4] Reg. IX. 1819, s. 2.
[5] Reg. II. 1825, ss. 4, 5.
[6] Reg II. 1821, s. 3.
[7] Reg. II. 1821, s. 5.

In 1827 Sudder Ameens, when duly empowered by the Sudder Dewanny Adawlut, were authorised to try original suits of the value of 1000 rupees, and any suits referred to them by the Zillah and City Judges not exceeding the same amount. Appeals from decisions of Sudder Ameens in such referred cases exceeding 500 rupees, were not to be referred to a Registrar, and the decision of the Zillah and City Judges in such appeals was to be final.[1]

Many important rules were enacted in the year 1831, most of which are now in force; the jurisdiction of the Moonsiffs was extended to 300 rupees,[2] and Sudder Ameens were empowered to try original suits referred to them by the Zillah and City Judges, to the amount of 1000 rupees;[3] an appeal lay to the Zillah or City Judge, whose decision was final.[4] Principal Sudder Ameens were also appointed, with power to take cognizance of original suits, referred as above, of the value of 5000 rupees;[5] a regular appeal lay from their original decisions to the Zillah and City Judges, and a special appeal to the Sudder Dewanny Adawlut.[6] The Zillah and City Judges were authorised, whenever the number of appeals from the decisions of Moonsiffs and Sudder Ameens was heavy, to obtain permission of the Sudder Dewanny Adawlut, to refer a specified number of the cases for trial by the Principal Sudder Ameens.[7] Special and summary appeals from decrees and orders in original suits and appeals, tried by Principal Sudder Ameens, were directed to be governed by the Rules previously in force respecting the admission of such appeals.[8] At the same time the Registers' Courts were abolished, and all suits pending therein were directed to be called in and referred, as the amount might be, to the Sudder Ameens or

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[1] Reg. IV. 1827.
[2] Reg. V. 1831, s. 5.
[3] Reg V 1831, s 15.
[4] Reg. V. 1831, s. 28.
[5] Reg. V. 1831, ss. 17, 18.
[6] Reg. V. 1831, s. 28.
[7] Reg. V. 1831, s. 16.
[8] Reg. V. 1831, s. 19.

Principal Sudder Ameens.[1] The Provincial Courts of Appeal were also gradually superseded, and the Zillah and City Judges were empowered instead to have primary jurisdiction in all suits exceeding in value 5000 rupees.[2] An appeal lay from their original decisions to the Sudder Dewanny Adawlut.[3]

In the same year a Court of Sudder Dewanny Adawlut was constituted for the North-Western Provinces, with the same powers in those Provinces as were vested in the Sudder Dewanny Adawlut at Calcutta.[4]

In 1832 the Governor-General in Council was declared competent to invest European officers presiding in a Civil Court with the power of availing themselves of the assistance of respectable natives in the trial of suits, original or on appeal, in either of the three following ways:—First, by referring the suit, or any point or points in the same, to a Panchâyit of such persons, who would carry on their inquiries apart from the Court, and report to it the result; the reference and its answer to be in writing, and filed in the suit. Secondly, by constituting two or more of such persons assessors or members of the Court, with a view to the advantages derivable from their observations, particularly in the examination of witnesses: the opinion of each assessor to to be given separately, and discussed; or, Thirdly, by employing them more nearly as a jury, when they would attend during the trial of the suit, and suggest such points of inquiry as occurred to them, and after consultation deliver in their verdict. In all these cases the decision was vested exclusively in the presiding Judge.[5]

In 1833 the Provincial Courts were finally abolished; all original suits then pending in such Courts were directed to be transferred to the Zillah and City Courts; and all appeals,

[1] Reg. V. 1831, s. 29.
[2] Reg. V. 1831, s. 27.
[3] Reg. V. 1831, s. 28.
[4] Reg. VI. 1831.
[5] Reg. VI. 1832.

regular, special, or summary, so pending, were to be transferred to the Sudder Dewanny Adawlut.[1] Additional Zillah and City Judges were also appointed in the same year.[2]

In 1836 it was enacted that the 53d Geo. III. c. 155, s. 107, which gave to British subjects resident in the provinces a right of appeal from the Company's to the Supreme Courts, should cease to have effect in India; and it was also enacted that no person by reason of birth or descent should be exempt from the jurisdiction of the Company's Courts,[3] or be incapable of being a Principal Sudder Ameen, Sudder Ameen, or Moonsiff.[4]

In the year 1837 the powers of the last-named officers were further enlarged, and they were empowered to set aside summary judgments passed by Collectors.[5] The Principal Sudder Ameens were authorised to take cognizance of suits of any amount referred to them by the Zillah or City Judges;[6] and also of all original suits so referred, preferred by Proprietors, Farmers, or Talookdárs, for the revenue of land held free from assessment, or claiming to hold lands exempt from revenue.[7] In suits exceeding in amount 5000 rupees an appeal lay from their decisions direct to the Sudder Dewanny Adawlut;[8] but in suits referred to Principal Sudder Ameens within the competency of a Moonsiff to decide, their decisions were appealable to the Zillah or City Judges, whose decision was to be final.[9] The Zillah and City Judges were also, in the same year, authorised to transfer any civil proceeding to a Principal Sudder Ameen; and in such cases an appeal from his order lay in the first instance to the Zillah or City Judge, and specially to the Sudder Dewanny Adawlut.[10]

In 1838 the Zillah Courts were authorised to receive a

[1] Reg. II. 1833, s. 5.
[2] Reg. VIII. 1833, s. 2.
[3] Act XI. 1836.
[4] Act VIII. 1836, s. 1.
[5] Act XXV. 1837, s. 2.
[6] Act XXV. 1837, s. 1.
[7] Act XXV. 1837, s. 3.
[8] Act XXV. 1837, s. 4.
[9] Act XXV. 1837, s. 6.
[10] Act XXV. 1837, s. 8.

summary appeal from the orders or decrees of the Moonsiffs subordinate to them.[1]

In the year 1843 it was enacted that special appeals should lie to the Sudder Dewanny Adawlut from all decisions passed in regular appeals in all subordinate Civil Courts, when it should appear that such decisions were inconsistent with law or usage, or the practice of the Courts, or involved doubtful questions of law, usage, or practice.[2]

In the year 1844 it was enacted that all suits within the competency of a Principal Sudder Ameen or Sudder Ameen to decide should ordinarily be instituted in their Courts; but that the Zillah or City Judges might withdraw them, and try them themselves, or refer them to any other competent Court subordinate to them. The Zillah and City Judges were also empowered to admit summary appeals from the orders of Principal Sudder Ameens and Sudder Ameens rejecting original suits cognizable by them.[3]

In 1853 Act III. of 1843 was repealed, and it was enacted that special appeals should lie to the Sudder Court, from any decision passed on regular appeal in any of the Courts below, on the following grounds: viz. 1. A failure to decide all the material points in the case, or a decision contrary to law; 2. Misconstruction of any document; 3. Ambiguity in the decision itself; and, 4. Substantial error or defect in procedure, or in the investigation of the case. No such special appeal was to lie on matter of fact.[4]

(*b*) *Criminal Judicature.*

The alterations in the system of criminal judicature introduced by Lord Cornwallis in 1793 have kept pace with the improvements in the civil department. A fourth Court of Circuit was established for Benares in 1795,[5] and subsequently a fifth for the ceded provinces.[6]

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[1] Act XXII. 1838.
[2] Act III. 1843, s. 1.
[3] Act IX. 1844, ss. 1, 2. 4.
[4] Act XVI. 1853, s. 4.
[5] Reg. V. 1795.
[6] Reg. VII. 1803.

The Assistants to the Magistrates were granted a limited occasional exercise of judicial powers in the year 1797.[1]

In the year 1801 the constitution of the Nizamut Adawlut was altered; the Governor-General and Council no longer presided; and it was declared to consist of three Judges, assisted by the chief Kází and two Muftís.[2] The number of Judges was afterwards increased, as in the Sudder Dewanny Adawlut.[3]

In 1807 Magistrates were given an extended jurisdiction, and were empowered to inflict imprisonment not exceeding one year, in addition to fine or stripes:[4] this power was not to be exercised by Assistant Magistrates,[5] but they were authorised under certain circumstances to sentence offenders to one month's imprisonment with or without corporal punishment.[6]

In 1808 it was declared that all trials of persons for robbery with open violence, and liable to transportation for life, should, on the conviction of the offender, be referred to the Nizamut Adawlut.[7]

In the year 1810 an important alteration was made, enabling the Government to appoint other persons, not being Zillah or City Judges, to exercise with them the office of Joint Magistrates. Assistant Magistrates were also appointed, with limited powers, for Police and other purposes. The superintendence of the Police, however, remained with the Zillah and City Magistrates, when not placed under the immediate authority of the Joint or Assistant Magistrates.[8]

In the year 1813 the Statute 53d Geo. III. c. 155, s. 105, made British subjects resident in the provinces punishable by the District and Zillah Magistrates for assaults and trespass against the Natives of India; but the convictions of such

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[1] Reg. XIII. 1797, s. 3.
[2] Reg. II. 1801, s. 10.
[3] Reg. XII. 1811, s. 2.
[4] Reg. IX. 1807, s. 19.
[5] Reg. IX. 1807, s. 20.
[6] Reg. IX. 1807, s. 20.
[7] Reg. VIII. 1808, s. 1.
[8] Reg. XVI. 1810.

Magistrates were removable by Certiorari to the King's Courts.

In 1814 the Judges of the Courts of Circuit were increased to the number of four ;[1] and afterwards, in 1826, the Governor-General in Council was empowered to appoint any number that might be deemed expedient.[2]

In 1817 all trials where persons were convicted in the Courts of Circuit of robbery or burglary, not within the provisions for robbery by open violence, if accompanied by murder, attempt to commit murder, or wounding, were made referrible to the Nizamut Adawlut.[3]

In the year 1818 the jurisdiction of the Magistrates and Joint Magistrates was extended, and they were empowered to try offenders charged with burglary, or attempt to commit that crime, and theft: if not attended with murder or violence, they were authorised to sentence to flogging, not exceeding thirty stripes, and imprisonment with hard labour for a term not exceeding two years ;[4] but otherwise they were to commit the prisoner for trial to the Court of Circuit; they also had authority to punish, in certain cases, persons convicted by them of buying or receiving stolen property, or of having escaped from gaol.[5] In 1819 they were further empowered to try offenders for woman-stealing, and for desertion of their wives and families,[6] and all sentences of Magistrates and Joint Magistrates were declared to be under the controul of the Courts of Circuit.[7]

In 1821 the jurisdiction of Assistant Magistrates was somewhat extended, and they, as well as the law-officers of the Zillah and City Courts, were authorised to try and determine petty thefts and other trivial offences when referred to them by a Magistrate, and to inflict fines, flogging, and imprisonment,

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[1] Reg. V. 1814, s. 2.
[2] Reg. I. 1826.
[3] Reg. XVII. 1817, s. 8.
[4] Reg. XII. 1818, ss. 2, 3.
[5] Reg. XII. 1818, ss. 4, 5.
[6] Reg. VII. 1819, ss. 2, 3.
[7] Reg. VII. 1819, s. 7.

within certain limits; the Assistant Magistrates, when specially empowered, being authorised to imprison offenders for one year, and the law-officers and Sudder Ameens for the space of one month.[1]

Corporal punishment by flogging was limited in the year 1825; females were entirely exempted,[2] and the ratan was substituted for the korah,[3] a heavy whip, which had been represented in some instances to have caused injurious effects. The Judges of Circuit were, in the same year, empowered to pass final sentences, and to carry them into execution, without reference to the Nizamut Adawlut on the ground of their want of authority to inflict sufficient punishment, in all cases of culpable homicide not amounting to wilful murder.[4] This power of passing final sentences was extended in 1825 to persons convicted of robbery by open violence not attended with murder or attempt to murder; the punishment, however, being restricted to thirty-nine ratans, and imprisonment with hard labour for fourteen years.[5]

In 1829 Commissioners of Circuit were appointed, with the same powers as Judges of Circuit, to hold gaol deliveries twice a year, to perform all duties theretofore discharged by the Superintendents of Police, and to be under the authority of the Nizamut Adawlut.[6] The Courts of Circuit were at the same time abolished.[7]

The Native officers were invested with an extended jurisdiction in criminal matters in 1831, when it was declared that Magistrates might refer any criminal case to a Sudder Ameen or Principal Sudder Ameen for investigation, though they were not authorised to make any commitment.[8] In the same year the Zillah and City Judges, not being Magistrates, were empowered to conduct the duties of the Sessions, to try com-

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[1] Reg. III. 1821, ss. 2, 3, 4.
[2] Reg. XII. 1825, s. 3.
[3] Reg. XII. 1825, s. 4.
[4] Reg. XII. 1825, s. 7.
[5] Reg. XVI. 1825.
[6] Reg. I. 1829.
[7] Reg. I. 1829, s. 5.
[8] Reg. V. 1831, s. 18.

mitments made by Magistrates, and to hold monthly gaol deliveries, and to pass sentence or to refer the trials to the Nizamut Adawlut, under the same rules applicable to Commissioners of Circuit; but they were not to interfere with the management of the Police, and all appeals from the orders of the Magistrates lay to the Commissioners of Circuit.[1]

In the same year a Court of Nizamut Adawlut was constituted for the North-Western Provinces, possessing the same powers as were vested in the Nizamut Adawlut at Calcutta.[2]

In 1832 some important alterations took place. The Principal Sudder Ameens, Sudder Ameens, and law officers, were authorised to sentence persons convicted of theft to labour, in addition to corporal punishment and imprisonment.[3] The Commissioners of Circuit and Sessions Judges were authorised to call in the assistance of respectable Natives, either by referring to them as Panchâyits or by causing them to sit during trials as assessors, or by employing them more in the nature of a Jury in like manner as was provided in Civil suits,[4] but in criminal trials the special authority of Government for granting these powers was not requisite. In all trials thus conducted the Fatwa was declared unnecessary, and might be dispensed with at the option of the Court; but if the Fatwa were dispensed with, and the crime of which the prisoner was convicted were one not punishable under the regulations, sentence was not to be passed, and the case was to be referred to the Nizamut Adawlut. The decision under all these modes of procedure was to be vested exclusively in the presiding officer. Persons not professing the Muhammadan faith were allowed to claim to be exempted from trial by the Muhammadan law, in which case the trial was to be conducted with the assistance of Natives as aforesaid, and the Fatwa was to be dispensed with.[5] The Nizamut Adawlut was also empowered

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[1] Reg. VII. 1831.
[2] Reg. VI. 1831.
[3] Reg. II. 1832, s. 3.
[4] See *supra*, p. 67.
[5] Reg. VI. 1832, ss. 1—5.

to exercise an absolute discretion as to requiring a Fatwa from the law officers of the Court.[1]

Corporal punishment was absolutely abolished in 1834, excepting where moderate chastisement was necessary for the maintenance of gaol discipline, and imprisonment was ordered to be substituted:[2] in such cases it was made competent to the Courts or officers to direct an additional term of imprisonment, as follows:—Courts of Nizamut Adawlut or Courts of Sessions or Circuit, two years; Magistrates or Joint Magistrates, one year; Assistants, Principal, and other Sudder Ameens, one month:[3] labour was also made commutable to fine.[4] The former provision was, however, afterwards modified, and Magistrates were empowered to inflict not exceeding thirty ratans for theft under 50 rupees, but in such case no other punishment was to be superadded: no female was to be corporally punished.[5]

In 1835 it was enacted that all or any part of the duties and powers of Commissioners of Circuit might be transferred by the Governors of Bengal and Agra respectively to the Sessions Judges.[6]

In the year 1841 it was enacted that crimes against the State should be tried by the ordinary tribunals, and that the Government might issue a commission to the Judges for their trial; their sentences and proceedings to be reported to the Nizamut Adawlut, who were to report their sentences to the Government for confirmation.[7] In the same year it was enacted that from every sentence or order in criminal trials or proceedings within the limitations prescribed by Regulation IX. of 1793, passed by Assistants to Magistrates, Sudder Ameens, or law officers, one appeal should be permitted within one month to the Magistrates or Joint Magistrates; and from

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[1] Reg. VI. 1832, s. 6.
[2] Reg. II. 1834, s. 2.
[3] Reg. II. 1834, s. 2.
[4] Reg. II. 1834, s. 3.
[5] Act III. 1844, ss. 1. 3.
[6] Act VII. 1835.
[7] Act V. 1841.

every sentence or order beyond such limitation, passed by a Magistrate or Joint Magistrate, or Assistant to a Magistrate vested with special powers, one appeal should be permitted within one month to the Sessions Judge; and from every such sentence or order of the latter, there should be permitted one appeal within three months to the Nizamut Adawlut, and that the sentences or orders passed on such appeals should be final.[1] It was, however, also enacted[2] (and re-enacted in 1848),[3] that the Nizamut Adawlut might, whenever it should think fit, call for the whole record of any criminal trial in any subordinate Court, and pass such orders thereon as it should think fit, but not so as to enhance the punishment awarded, or punish any person acquitted, by the subordinate Court.

In 1843 it was enacted that in cases of conviction of British subjects by Justices of the Peace in the Mofussil or Magistrates, under the 53d Geo. III. c. 155, s. 105, an appeal should lie from the sentences of such Justices of the Peace or Magistrates, according to the same rules as are provided by the Regulations and Acts of Government in the case of sentences passed by Magistrates in the exercise of their ordinary jurisdiction, and cases so appealed were not to be afterwards liable to revision by means of a writ of Certiorari.[4]

In the same year the local Governments of both divisions of Bengal were empowered to appoint uncovenanted Deputy Magistrates capable of being employed as Judicial Officers, with limited powers, under Reg. XIII. of 1797, Reg. IX. of 1807, or Reg. III. of 1821, in cases referred to them by the Magistrate, or with the full powers of a Magistrate, or as a Police Officer.[5]

In the year 1845 Assistant Magistrates, vested with special powers, were declared competent to decide cases under Act IV. of 1840 referred to them by the Magistrate.[6]

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[1] Act XXXI. 1841, s. 2.
[2] Act XXXI. 1841, ss. 3, 4.
[3] Act XIX. 1848, s. 4.
[4] Act IV. 1843.
[5] Act XV. 1843.
[6] Act XXVII. 1845.

In 1854 Assistants and Deputy Magistrates were empowered to try cases without previous reference by the Magistrate, and Deputy Magistrates vested with special powers were given the same powers as Assistants to try cases under Act IV. of 1840.[1]

(c) *Police Establishment.*

The Police establishment in the Bengal Presidency remains at the present day nearly in the same state as when first established by Lord Cornwallis; but some few circumstances and modifications may be remarked.

In the year 1795 the Police of Benares was placed under the management of the Tahsíldárs, landowners and farmers, who were made responsible for robberies committed within the limits of their estates, excepting night robberies on the open roads or in woods.[2] In 1803 the same plan was extended to the ceded provinces,[3] and in 1804 to the conquered provinces.[4]

The Tahsíldárí system being found, however, to be objectionable, all the above places were, in the year 1807, divided into Police jurisdictions, nearly in the same way as had been already adopted throughout Bengal, Behar, and Orissa.[5] In all these instances the cities and towns were placed under the guard of Dárógháhs and Kútwáls. Ameens of Police were appointed in the same year in all the Bengal provinces, for the apprehension of persons charged with heinous offences.[6]

A Superintendent of Police, being a covenanted servant of the Company, was established in 1808, for the provinces of Bengal and Orissa, but more especially for Calcutta, Moorshedabad, and Dacca. This Superintendent was to possess a concurrent jurisdiction with the Zillah and City Magistrates, and to be under the authority of the Nizamut Adawlut in Police

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[1] Act X. 1854.
[2] Reg. XVII. 1795.
[3] Reg. XXXV. 1803.
[4] Reg. IX. 1804, s. 9.
[5] Reg. XIV. 1807.
[6] Reg. XII. 1807, and Reg. XIV. 1807.

matters.[1] In 1810 his jurisdiction was extended to Patna, and at the same time a second Superintendent was appointed for Benares and Bareilly.[2]

The duties of these Superintendents were defined and enlarged in 1816, when, in addition to the management of the whole system of Police being committed to their care, they were directed to submit to the Government annual reports of all Police occurrences and statements of the Police establishments in their respective districts.[3]

A general revision of the whole system of Police, not, however, effecting any material alteration in the previous establishment, took place in the following year, and a Regulation was passed,[4] which, as Harington observes, may be called "The Police Officers' Manual in the Provinces subject to the Presidency of Fort William."[5] This Regulation still further defines the duties of the Superintendents, and the relative authorities and functions of the subordinate officers, who were to preserve the peace within the limits of their jurisdictions, to prevent, so far as possible, all criminal offences, to apprehend offenders, and to report all occurrences connected with the Police to the Magistrates. The Dárógháh was empowered to hold inquests in cases of suspicious death, to search for stolen property, to suppress riots and affrays, to apprehend persons resisting process, to report burglaries, and to direct particular attention to the suppression of Dakaití and illegal Satí. He was to forward all persons apprehended by him, and charged with crimes or offences, to the Magistrate. The Muharrir, who was the second officer of the Thánú, was authorised to exercise the powers vested in the Dárógháh in the absence of that officer, as was also the Jamadár, or third officer, in the absence of the Muharrir and Dárógháh.[6] The village watchmen were also

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[1] Reg. X. 1808.
[2] Reg. VIII. 1810.
[3] Reg. XVII. 1816.
[4] Reg. XX. 1817.
[5] Harington's Analysis, p. 464, 2d edit.
[6] Reg. XX. 1817, s. 4.

enjoined to report to the Thánáh all Police occurrences, and to apprehend offenders.[1]

No further alteration of importance took place until the year 1829, when the office of Superintendent of Police was abolished, and the duties of the Superintendents were assumed by the Commissioners of Circuit already described.[2]

In 1831 Tahsíldárs in the ceded and conquered provinces were authorised to exercise the same powers as Dárógháhs of Police, and all Officers of Police were to be subordinate to them.[3]

The Governor of Bengal, or the Lieutenant-Governor of the North-Western Provinces, were empowered, in the year 1837, to appoint Superintendents of Police for the territories under their respective Governments, who were to be guided in the execution of their duties by the rules contained in Regulation X. of 1808; and on such appointment the Commissioners of Circuit were to cease to exercise the powers of Superintendents of the Police vested in them by Regulation I of 1829,[4] and the said Superintendents were empowered to exercise all the powers exercised by the Commissioners of Circuit, in virtue of the authority vested in them by Section 3 of the last-mentioned Regulation.

Tahsíldárs having Police jurisdiction under Reg. XI. of 1831 were, in 1854, granted controul over all Dárógháhs of Police. The said Regulation was also extended to the province of Benares.[5]

2. Madras.

(1) Origin of the Adawlut System.

The present Madras system for the administration of justice is founded on that introduced during the Government of the

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[1] Reg. XX. 1817, s. 21.
[2] Reg. XI. 1831.
[3] Act XVI. 1854.
[4] Reg. I. 1829.
[4] Act XXIV. 1837, ss. 1—4.

son of the great Lord Clive in the year 1802, and which was framed upon that of Bengal. Following the plan I have already traced out, I shall describe shortly, in the first place, the system of 1802, and then proceed to mention succinctly the changes that have taken place up to the present time, treating separately of the three departments, Civil, Criminal, and Police.

(2) System of 1802.

The system of 1802 presents little or no variation from that of Lord Cornwallis. It was determined that the offices of Judge and Magistrate, and of Collector of the Revenue, should be held by distinct persons. Native Commissioners were appointed, with power to try suits not exceeding in value 80 rupees: an appeal lay to the Judge.[1] The Registers of the Zillah Courts had jurisdiction to try suits, original or on appeal from the Native Commissioners, referred to them by the Judge, when the property in dispute did not exceed 200 rupees: their decisions were final to the amount of 25 rupees: above that sum an appeal lay to the Zillah Judge.[2] A summary appeal also lay to the Zillah Judge in cases where the Registers refused to admit or investigate appeals from the decisions of the Native Commissioners on the ground of delay or informality.[3] The Zillah Courts, presided over respectively by one Judge, assisted by native law officers, were established in the various districts in which the land revenue had been settled in perpetuity, for the decision of civil suits.[4] The decisions of the Zillah Courts were final in suits under 1000 rupees in value;[5] but when above that amount an appeal lay to the Provincial Courts of Appeal.[6] The Provincial Courts were four in number, and were to try appeals from the Zillah Courts, and

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[1] Reg. XVI. 1802, ss. 2. 18.
[2] Reg. XII. 1802, ss. 6. 9, 10.
[3] Reg. IV. 1802, s. 12.
[4] Reg. II. 1802, ss. 1—3.
[5] Reg. II. 1802, s. 21.
[6] Reg. IV. 1802, s. 12.

original suits referred to them by the Sudder Adawlut: their decisions were final in suits where the amount in dispute did not exceed 5000 rupees, but above that sum, and in cases where they refused to admit regular appeals from the Zillah Courts for delay or other informality, a summary appeal lay to the Sudder Adawlut.[1] The Provincial Courts were also empowered to take cognizance of appeals which the Zillah Courts had refused to admit, or dismissed without investigation on the ground of delay, informality, or other default.[2] The Sudder Adawlut consisted of the Governor in Council;[3] and from its decisions in civil suits of the value of 45,000 rupees and upwards an appeal lay to the Governor-General in Council.[4]

The plan introduced for the administration of criminal justice, was much the same as that in Bengal. Magistrates and Assistant Magistrates were appointed, and were directed to apprehend persons charged with crimes or offences, and to bring them to trial; and they had powers of inflicting punishment in cases of abuse and assault, and petty theft, by imprisonment, corporal punishment, or fine, which was in no case to exceed 200 rupees.[5] British subjects residing in the provinces, and charged with criminal offences, were to be apprehended by the Magistrates, and sent for trial to the Supreme Court at Madras.[6] Four Courts of Circuit were established for the trial of crimes and offences:[7] the Judges were to hold half-yearly gaol deliveries,[8] and they were empowered to pass sentence in capital cases, but such sentences were to be referred for confirmation to the Foujdary Adawlut.[9] The Foudjary Adawlut, or Chief Criminal Court consisted of the Governor and members of the Council,[10] and had cognizance of all matters

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[1] Reg. V. 1802, s. 10.
[2] Reg. IV. 1802, s. 12.
[3] Reg. V. 1802, s. 2.
[4] Reg. V. 1802, ss. 31—36.
[5] Reg. VI. 1802, ss. 8, 9.
[6] Reg. VI. 1802, s. 19.
[7] Reg. VII. 1802, s. 2.
[8] Reg. VII. 1802, s. 11.
[9] Reg. VII. 1802, s. 27.
[10] Reg. VIII. 1802, s. 3.

relating to Criminal Justice and the Police,[1] and the power of passing final sentence in capital cases. The Governor in Council was empowered to pardon convicts, or commute their punishment.[2] All these Criminal Courts administered the Muhammadan law as modified by the Regulations.

No general system of Police was introduced in the Madras Presidency by the Regulations of 1802. The Police establishments in the several provinces remained of much the same nature as under the Native Governments. In some districts, the Northern Circars for instance, little more than traces of a regular system were discoverable, though almost everywhere village watchers existed, who acted under the superintendence of the head men of the villages.

A Regulation was passed in 1802 for the establishment of a more efficient system in the Zillah of Chingleput (the Company's Jágír), one of the most ancient of the British Settlements on the Coromandel coast. By this Regulation, upon which was based the system in force throughout the Madras Presidency till altered in 1816, the Police of the Zillah of Chingleput, then called Carangooly, was taken out of the hands of the Poligars and Kavilgars, and assigned to officers nominated by the East-India Company's Government. Police Dárógháhs were appointed to superintend and controul entire divisions; Thánádárs, under their orders, to superintend the stations in each division; and Watchers, who were to execute the duties of Police in the roads and villages of each division; the Officers of Police were to be subject to the authority of the Judge and Magistrate of the Zillah.[3] The Watchmen were to apprehend offenders, and deliver them to the Thánádárs,[4] who were also empowered to apprehend offenders and send them to the Dárógháhs:[5] these latter, in their turn, were likewise authorised to apprehend suspected

[1] Reg. VIII. 1802, s. 8.
[2] Reg. VIII. 1802, s. 14.
[3] Reg. XXXV. 1802, s. 3.
[4] Reg. XXXV. 1802, s. 8.
[5] Reg. XXXV. 1802, s. 13

persons, whom they were to convey before the Magistrate, but they were not to inflict any punishment.[1]

Such was the original constitution of the Courts of Justice and the Police in the Madras Presidency. I shall now separately enumerate the alterations that have been made in the various departments since the year 1802.

(3) Alterations since 1802.

(*a*) *Civil Judicature.*

The first change worthy of notice in the department of Civil Judicature took place in the year 1806, when Zillah Courts were established in the districts to which the permanent settlement had not been extended.[2] The constitution of the Sudder Adawlut was also altered and new Judges appointed;[3] and in the following year[4] the Governor was declared no longer to be a Judge of the Court. The Court has been since modified, and made to consist, as in Bengal, of such number of Judges as the Governor in Council might deem requisite.[5]

In 1809 a Regulation[6] was passed for the occasional appointment of Assistant Judges of the Zillah Courts, and for altering and extending the jurisdiction of the Registers of those Courts, whose power of final decision was, however, abolished.[7] The decision of a Zillah Judge, confirming on appeal the decree of the Register, was final; but if reversing the Register's decree, or disallowing a sum exceeding 100 rupees, a further appeal lay to the Provincial Court.[8] The appointment of head Native Commissioners or Sudder Ameens was authorised, who were to try referred causes to the amount of 100 rupees.[9] The decrees of the Zillah Judges were

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[1] Reg. XXXV. 1802, s. 21.
[2] Reg. II. 1806.
[3] Reg. IV. 1806.
[4] Reg. III. 1807.
[5] Reg. III. 1825.
[6] Reg. VII. 1809.
[7] Reg. VII. 1809, s. 6.
[8] Reg. VII. 1809, s. 8.
[9] Reg. VII. 1809, s. 9.

declared to be final in all appeals from decisions passed by the Native Commissioners; but an appeal was ordered to lie to the Provincial Courts from the decisions of the Zillah Judges, in all suits tried by them in the first instance.[1] In this year the Provincial Courts were also authorised to admit summary appeals from the orders of the Zillah Courts refusing to admit or investigate original suits on the ground of delay, informality, or other default;[2] and they were empowered to admit a special appeal in all cases where a regular appeal might not lie to them from the decrees of the Zillah Judges, if such decrees appeared erroneous or unjust, or if the cause appeared to be of sufficient importance to merit further investigation.[3] These powers of admitting special appeals by the Provincial Courts were also made applicable to the Sudder Adawlut with respect to decrees passed by the Provincial Courts not open to the regular appeal.[4] In the same year the Provincial Courts were given original jurisdiction in suits above 5000 rupees, which had been previously cognizable by the Zillah Courts.[5]

In 1816 the Heads of Villages were appointed to be Moonsiffs, with a power to try and finally determine suits not exceeding 10 rupees in value;[6] and they were also authorised to assemble Village Panchâyits for the adjudication of civil suits of any amount within their village jurisdictions: the majority to decide. On proof of partiality the Provincial Courts were empowered to annul the decisions of the Panchâyits, and to refer to a second Panchâyit; but if so referred to a second Panchâyit, and the second decision should agree with the former one, such decision was final.[7] The Moonsiffs were also authorised, as arbitrators, to determine suits for sums of money or other personal property not exceeding 100 rupees, when both the parties interested voluntarily agreed to such arbitration.[8] In the same year District Moonsiffs were

[1] Reg. VII. 1809, ss. 23, 24.
[2] Reg. VII. 1809, s. 25.
[3] Reg. VII. 1809, s. 26.
[4] Reg. VII. 1809, ss. 28, 29.
[5] Reg. XII. 1809, ss. 2, 3.
[6] Reg. IV. 1816, ss. 2. 5.
[7] Reg. V. 1816, ss. 2—11.
[8] Reg. IV. 1816, s. 27.

empowered to take cognizance of suits for land and personal property to the amount of 200 rupees, excepting suits for Lákhiráj land, when their jurisdiction was limited to suits where the annual value did not exceed 20 rupees.[1] The decisions of the District Moonsiffs, in suits where the amount in dispute did not exceed 20 rupees, were final; in Lákhiráj suits their decisions were final where the annual value of the land did not exceed 2 rupees: above those sums an appeal lay to the Zillah Courts.[2] In cases of inheritance, or succession to landed property between Hindú or Muhammadan parties, the District Moonsiffs were directed to obtain an exposition of the laws from the law officers of the Zillah Courts.[3] The District Moonsiffs were also empowered to assemble District Panchâyits for the adjudication of civil suits of any amount, their decision to be appealable or final by similar rules to those above mentioned as applicable to Village Panchâyits.[4] District Moonsiffs were also empowered, as arbitrators, to hear and determine suits voluntarily referred to them for real or personal property of the same amount as their primary jurisdiction: in such suits their decisions were final.[5] In this year the jurisdiction of Sudder Ameens was extended, in suits referred to them, to the amount of 300 rupees,[6] an appeal lying from their decisions to the Zillah Judge. The Sudder Adawlut was in the same year empowered to call up from the Provincial Courts, and try in the first instance, suits for 45,000 rupees and upwards,[7] the then appealable amount to the Privy Council, but which has been since altered, as will be mentioned in Chapter IV. The Sudder Adawlut was also authorised to admit a summary appeal from the Provincial Courts in all cases where such Courts had refused to admit or investigate suits, original or on appeal, on the ground of delay, informality, or other default.

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[1] Reg. VI. 1816, s. 11.
[2] Reg. VI. 1816, s. 43.
[3] Reg. VI. 1816, s. 62.
[4] Reg. VII. 1816, ss. 2–11.
[5] Reg. VI. 1816, ss. 57, 58.
[6] Reg. VIII. 1816, s. 7.
[7] Reg. XV. 1816, s. 2.

The Provincial Courts and the Zillah Judges were in like manner, respectively, to be competent to admit summary appeals from the orders of the Zillah Judges or the Registers and Sudder Ameens.[1] The Provincial Courts were also debarred from admitting regular appeals from decisions passed by Zillah Judges, on appeals from their Registers: it was provided, however, that they might admit special appeals from the decisions of the Zillah Judges in regular appeals from original judgments of Registers, Sudder Ameens, and Moonsiffs.[2] At the same time all original suits tried by Provincial Courts were made appealable to the Sudder Adawlut.[3]

In the year 1818 the Governor-General formally relinquished his right of hearing appeals from the Sudder Adawlut at Madras; and a Regulation was framed on Beng. Reg. XVI. of 1797, for the conduct of appeals to England from the Sudder Adawlut.[4] This will be again noticed in another place.

In 1820 the 53d Geo. III. c. 155, was ordered to be in part promulgated at Madras, and translated into the country languages. Under this Statute the Company's Courts were given a jurisdiction in civil suits brought by Natives against British subjects residing, trading, or holding immoveable property in the interior. An appeal lay in such cases either to the Supreme Court or to the Sudder Adawlut.[5]

The jurisdictions of Registers, Sudder Ameens, and District Moonsiffs were, in 1821, extended, respectively, to suits of the value of 1000, 750, and 500 rupees.[6]

In 1825 all decisions by District Moonsiffs, in suits for property in land, were made open to an appeal to the Zillah Courts.[7]

In 1827 Auxiliary Zillah Courts were established, to be superintended by Assistant Judges, who, it may be here

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[1] Reg. XV. 1816, s. 5.
[2] Reg. XV. 1816, s. 3.
[3] Reg. XV. 1816, s. 6.
[4] Reg. VIII. 1818.
[5] Reg. II. 1820.
[6] Reg. II. 1821, ss. 2—4.
[7] Reg. V. 1825.

remarked, have been termed, in succeeding enactments, Subordinate Judges, and not Assistant Judges. Sudder Ameens, being Natives, were also appointed in such Courts, with the same powers as those given to Sudder Ameens by Regulation VIII. of 1816. The Assistant Judges had original jurisdiction to the amount of 5000 rupees; and they were also to try appeals from the decisions of the Moonsiffs. An appeal lay from the decisions of the Assistant Judges in suits exceeding 1000 rupees in value, to the Zillah Courts; but above that amount to the Provincial Courts. An appeal was also directed to lie from the original decisions of the Sudder Ameens, and a special appeal from their decisions on appeals from Moonsiffs, to the Assistant Judges.[1] Native Judges were appointed in the same year to try suits referred to them by the Assistant Judges, but not to have jurisdiction over Europeans or Americans.[2] Special appeals were also made admissible in 1827 as follows: viz. from the decrees of Assistant or Native Judges, to the Provincial Courts; from decrees of the Provincial Courts on appeals from Assistant or Native Judges, to the Sudder Adawlut.[3]

In 1833 the jurisdiction of Registers was extended to 3000 rupees, of Sudder Ameens to 2500 rupees, and of District Moonsiffs to 1000 rupees.[4] Suits for Lákhiráj land were to be cognizable on a reduced scale as before: viz. where the annual value of the land was one-tenth of those amounts.

In 1836 it was enacted that the 107th section of the 53d Geo. III. c. 155, which gave to British subjects in the provinces a right of appeal from the Mofussil Courts to the Supreme Court, should cease to have effect in India; and it was also enacted that no person by reason of birth or descent should be exempted from the jurisdiction of the Company's Courts,[5] or be incapable of being a Principal Sudder Ameen

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[1] Reg. I. 1827, ss. 2—7.
[2] Reg. VII. 1827.
[3] Reg. XI. 1827.
[4] Reg. III. 1833, ss. 3—5.
[5] Act XI. 1836.

(as the Native Judges were then directed to be entitled), Sudder Ameen, or Moonsiff.[1]

Summary appeals were declared, in 1838, to be admissible from the orders of District Moonsiffs refusing to admit or investigate suits cognizable by them, on the ground of delay, informality, or other default, by the Zillah Judges, Assistant Judges of Auxiliary Courts, and Principal Sudder Ameens.[2]

In 1843 it was enacted that special appeals should lie to the Sudder Adawlut from all decisions passed on regular appeals in all Subordinate Civil Courts, when it should appear that such decisions were inconsistent with law or usage, or the practice of such Courts, or involved doubtful questions of law, usage, or practice.[3] In the same year a most important Act was passed, which placed the administration of justice in Madras on its present footing. By this Act the Provincial Courts of Appeal were abolished, and new Zillah Courts were established, presided over by one Judge, to perform their functions, and to replace the Zillah Courts then existing.[4] The original jurisdiction vested in the Provincial Courts for amounts of less value than 10,000 rupees, was transferred to the Subordinate Judges and the Principal Sudder Ameens;[5] and such Courts were to have jurisdiction over Europeans and Americans as well as Natives.[6] The new Zillah Courts were to entertain appeals from the decrees of the Subordinate Judges and Principal Sudder Ameens, and of Sudder Ameens and District Moonsiffs: they were also authorised to refer appeals from the decisions of District Moonsiffs to the Subordinate Judges or Principal Sudder Ameens; and when these Judges were stationed at places remote from the station of the Zillah Judge, the Sudder Adawlut was empowered with the sanction of Government to order such appeals to be preferred to such Courts direct; but it was also provided that the Zillah Judges

[1] Act XXIV. 1836, ss. 1—5.
[2] Act XVII. 1838.
[3] Act III. 1843, s. 1.
[4] Act VII. 1843, s. 1.
[5] Act VII. 1843, s. 4.
[6] Act VII. 1843, s. 5.

might call up to their own Courts appeals received by such Courts.[1] The Government was authorised to appoint Assistant Judges to the new Zillah Courts, to whom the Zillah Judges might refer any appeals depending before them, excepting appeals from the Subordinate Judges and Principal Sudder Ameens.[2] Appeals from the new Zillah Courts lay to the Sudder Adawlut.[3] No Registers were assigned to the new Zillah Courts, and consequently the Registers' Courts no longer exist. Summary appeals were directed to lie to the new Zillah Courts from the Subordinate Judges and Principal Sudder Ameens,[4] and from the new Zillah Courts to the Sudder Adawlut.[5]

In 1844 it was enacted that all suits within the competency of Principal Sudder Ameens and Sudder Ameens to decide, should be ordinarily instituted in their Courts; but that they might be withdrawn at the will of the Zillah Judges, who might try them themselves, or refer them to any other competent Subordinate Court. The Zillah Judges were also empowered to admit summary appeals from the orders of Principal Sudder Ameens and Sudder Ameens rejecting original suits cognizable by them on the ground of any default.[6]

In 1853 Act III. of 1843 was repealed, and it was enacted that special appeals should lie to the Sudder Adawlut from any decision passed on regular appeal in any of the lower Courts on the following grounds: viz. 1. A failure to decide all the material points in the case, or a decision contrary to law; 2. Misconstruction of any document; 3. Ambiguity in the decision itself; and 4. Substantial error or defect in procedure or in the investigation of the case. No such special appeal was to lie on matter of fact.[7]

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[1] Act VII. 1843, s. 8.
[2] Act VII. 1843, ss. 8. 52.
[3] Act VII. 1843, s. 9.
[4] Act VII. 1843, s. 8.
[5] Act VII 1843, s. 9.
[6] Act IX. 1844, ss. 1, 2. 4.
[7] Act XVI. 1853.

(*b*) *Criminal Judicature.*

The first alteration in the system of criminal judicature established at Madras in 1802, was in the constitution of the Foujdary Adawlut, which was changed in accordance with the provisions of the Bengal Regulations with respect to the Nizamut Adawlut.[1] In the year 1811 Magistrates were given an extended jurisdiction, and were empowered to inflict punishment on persons convicted by them, by imprisonment not exceeding one year with corporal punishment not exceeding thirty ratans, or by fine of 200 rupees.[2] This power was not to be exercised by their Assistants.[3]

In 1816 the offices of Zillah Magistrate and Assistant Magistrate were transferred from the Judge to the Collectors of the Zillahs and the Assistants to the Collectors;[4] and the Magistrates were empowered to apprehend offenders, and in certain cases to pass judgment, to be referred to the Foujdary Adawlut.[5] They were also authorised to punish persons guilty of petty thefts, and other minor offences, by stripes not exceeding eighteen ratans, imprisonment not exceeding fifteen days, or fine not exceeding 50 rupees;[6] in other cases to send them for trial to the Criminal Judge of the Zillah.[7] In the same year the Judges of the Zillah Courts were appointed to be Criminal Judges of their respective Zillahs, with power to punish offenders, in some cases, with stripes not exceeding thirty ratans; and, in cases of theft, in addition, with imprisonment not exceeding six months; in other cases with fine not exceeding 200 rupees;[8] but prisoners charged with more serious offences, were to be committed for trial to the Courts of Circuit.[9] The Criminal Judges were also invested with similar powers to those before exercised by the Zillah Magistrates.[10]

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[1] Reg. IV. 1806, and Reg. III. 1807.
[2] Reg. IV. 1811, s. 12.
[3] Reg. IV. 1811, s. 13.
[4] Reg. IX. 1816, ss. 3, 4.
[5] Reg. IX. 1816, s. 18.
[6] Reg. IX. 1816, ss. 32, 33. 35.
[7] Reg. IX. 1816, s. 34.
[8] Reg. X. 1816, ss. 2. 7.
[9] Reg. X. 1816, s. 9.
[10] Reg. X. 1816, s. 39.

The Zillah Magistrates were, in 1818, empowered to delegate the whole or any part of their authority to their Assistants.[1]

By the 53d Geo. III. c. 155, s. 105, which was passed in 1813, and which was ordered to be in part promulgated at Madras in 1820, Zillah Magistrates were given a jurisdiction over British subjects residing in the interior for assaults and trespasses against Natives; their convictions, however, in such cases were removable by Certiorari to the Supreme Court.[2]

In 1822 the Criminal Judges were authorised to take cognizance of burglary, and if not attended with violence to punish the offenders with thirty stripes and imprisonment with hard labour for two years; but if accompanied with violence, to commit them to the Court of Circuit. On such commitment the Court of Circuit was empowered to punish the offenders by thirty-nine stripes, and imprisonment in banishment for fourteen years, if the burglary were not attended with attempt to murder or wounding; but otherwise, on conviction, the trial was to be referred to the Foujdary Adawlut.[3] The Criminal Judges were likewise empowered to punish for theft exceeding 50 rupees, and not attended with attempt to murder or with wounding, by imprisonment with hard labour for two years and thirty ratans; but otherwise to refer the trial to the Circuit Judge.[4] The Criminal Judges were also authorised in certain cases to try and punish offenders for receiving or purchasing stolen goods,[5] and convicts escaping from gaol.[6]

Thefts exceeding 300 rupees were, in 1825, declared not to be cognizable by the Criminal Judge, who was to commit offenders in such cases to the Court of Circuit.[7]

The Assistant Judges appointed under Regulation I. of 1827, were constituted Joint Criminal Judges of their Zillahs; and Subordinate Collectors exercising the powers of Magis-

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[1] Reg. IX. 1818.
[2] Reg. II. 1820.
[3] Reg. VI. 1822, s. 2.
[4] Reg. VI. 1822, s. 3.
[5] Reg. VI. 1822, s. 4.
[6] Reg. VI. 1822, s. 5.
[7] Reg. I. 1825, s. 9.

trates were directed to be called Joint Magistrates.[1] The Native Judges appointed under Regulation VII. of 1827 were constituted Native Criminal Judges in the same year, and were ordered to be guided by the same rules as Criminal Judges, and invested with the same powers as Magistrates, but without jurisdiction over any Europeans or Americans;[2] they were afterwards, in 1836, designated Principal Sudder Ameens.[3] In 1827 a Regulation was also passed[4] for the gradual introduction of the trial by jury into the criminal judicature, and it was declared to be unnecessary for either the Judge of Circuit, or the Foujdary Adawlut, to require a Fatwa from their law officers as to the guilt of the prisoner, that being established by the verdict of the jury.[5]

In the year 1828 the use of the ratan was abolished, and the cat-of-nine-tails substituted;[6] and in 1830 the korah was also discontinued, and a like substitution ordered.[7] Females were exempted from punishment by flogging in 1833.[8]

Magistrates, Criminal, Joint Criminal, and Native Criminal Judges were, in 1832, respectively empowered to adjudge solitary imprisonment in all cases cognizable by them.[9]

In the year 1833 Criminal, Joint Criminal, and Native Criminal Judges were authorised to employ the Sudder Ameens in the investigation and decision of criminal cases, except in cases committable for trial before the Court of Circuit; such Judges to have power to overrule the decisions of the Sudder Ameens, who were, moreover, not to have any jurisdiction over Europeans or Americans.[10]

In 1837 the Magistrates were authorised to send persons, not being Europeans or Americans, for trial, commitment, or confinement, to the Principal Sudder Ameens.[11]

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[1] Reg. II. 1827, ss. 2—5.
[2] Reg. VIII. 1827.
[3] Act XXIV. 1836, s. 1.
[4] Reg. X. 1827.
[5] Reg. X. 1827, s. 33.
[6] Reg. VIII. 1828.
[7] Reg. II. 1830.
[8] Reg. II. 1833.
[9] Reg. XIII. 1832, s. 4.
[10] Reg. III. 1833, s. 2.
[11] Act XXXIV. 1837.

The Foujdary Adawlut was empowered in 1840 to dispense altogether with the Fatwa, but not with the Muhammadan law.[1]

In the year 1841 it was enacted that state offences should be triable by the ordinary criminal tribunals, but the sentences and proceedings in such cases were directed to be reported to the Foujdary Adawlut, who were again to refer their sentences to the Government for confirmation.[2]

In 1843 sentences passed by Justices of the Peace in the Mofussil, or Magistrates, on British subjects residing in the provinces, for assaults and trespasses against Natives of India, under the 53d Geo. III. c. 155, s. 105, were made appealable in the regular course, according to the Regulations and Acts of Government, in the same manner as ordinary sentences passed in the ordinary exercise of a Magistrate's jurisdiction; and when so appealed, they were no longer to be liable to revision by Certiorari.[3] The judges of the new Zillah Courts established in the same year were empowered to exercise all the powers of the Judges of the Courts of Circuit,[4] which were then abolished; and they were directed to hold permanent sessions, for the trial of all persons accused of crimes formerly cognizable by the Courts of Circuit.[5] It was made competent to the Sessions' Judge in criminal cases, to avail himself of the aid of respectable Natives, or other persons in either of the two following ways: viz.—1. By constituting them Assessors, or members of the Court, with a view to benefit by their observations, particularly in the examination of witnesses; or, 2. By employing them more nearly as a jury, to attend during the trial, to suggest points of inquiry, and after consultation to deliver in their verdict. The decision was, however, to be passed according to the opinion of the Judge, whether agreeing with the Assessors or Jury, or not; but if in opposition to their opinions, it was to be referred to the Foujdary Adawlut.[6]

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[1] Act I. 1840.
[2] Act V. 1841.
[3] Act IV. 1843.
[4] Act VII. 1843, s. 26.
[5] Act VII. 1843, s. 27.
[6] Act VII. 1843, s. 32.

He also had the power of overruling criminal sentences of Sudder Ameens.[1] The criminal jurisdiction of the Zillah Courts constituted by the Regulations was transferred to the Subordinate Criminal Courts established under Regulations II. and VIII. of 1827.[2] It may be added that the Assistant Judges constituted under Regulation II. of 1827, and who were to take the functions of the Criminal Judges, were, and are now, called Subordinate Judges. The power of the Magistrates was also extended in this year, and they were authorised to exercise the powers vested in Criminal Judges by Regulation X. of 1816 concurrently with the Subordinate Criminal Courts:[3] an appeal however was directed to lie from their sentences within one month to the Sessions' Judge.[4]

In the year 1854 District Moonsiffs were given a criminal jurisdiction in petty offences and petty thefts.[5]

(c) Police Establishment.

In 1816 the first Regulation was passed for the organization of a general system of Police throughout the territories subject to the Government of Fort St. George. The establishments of Dárógháhs and Thánádárs were abolished; and the duties of Police were directed to be discharged by the Heads of Villages, aided by Karnams or Village Registers, and Talliars and other Village Watchers; the Tahsíldárs or Native Collectors, with the assistance of Péshkárs, Gumáshtahs, and establishments of Peons; Zamíndárs; Ameens of Police; Kútwáls and other Peons; and the Magistrates of Zillahs and their Assistants.[6] The Heads of Villages were to apprehend offenders, and forward them to the Police Officer of the district,[7] except in trival cases of abuse and assault, when they had a limited power of punishment by confinement not exceeding twelve hours.[8] The Tahsíldárs were to be

[1] Act VII. 1843, s. 36.
[2] Act VII. 1843, s. 1.
[3] Act VII. 1843, s. 54.
[4] Act VII. 1843, s. 55.
[5] Act XII. 1854.
[6] Reg. XI. 1816, s. 3.
[7] Reg. XI. 1816, s. 5.
[8] Reg. XI. 1816, s. 10.

Heads of the Police of their districts; they were to apprehend persons charged with heinous offences, and after investigation, to forward the prisoners and a report of their proceedings to the Criminal Judge,[1] and in cases of trivial abuse or assault to inflict slight punishment, extending to a fine of one rupee or confinement for twenty-four hours.[2] Magistrates were in certain cases to invest Zamíndárs with police authority,[3] and to appoint Ameens of Police in large towns, to be under their immediate authority or that of the Tahsíldárs, and to be invested with the same powers, either as Heads of Villages or Tahsíldárs, as might be expedient.[4] The Magistrates and their Assistants were charged generally with the maintenance of the peace in their respective Zillahs.[5]

In the year 1821 Police Ameens were given a jurisdiction beyond the limits of the towns for which they were appointed;[6] and the Magistrates were empowered to select subordinate officers to make inquiry into offences, hold inquests, and perform the duties before assigned to Tahsíldárs and other head officers of Police, but without any power of inflicting punishment.[7] The Heads of District Police were authorised to hear and determine cases of petty theft, and to inflict moderate punishment, extending to six stripes, on conviction, or to forward the offenders to the Magistrate.[8] The power of fining possessed by Tahsíldárs was increased to three rupees.[9] The Heads of Villages were also empowered to punish petty thefts, as well as other trivial offences, by imprisonment for twelve hours.[10]

In 1832 the powers of Heads of District Police were extended to imprisonment for ten days, with labour, but they were no longer to inflict corporal punishment.[11] And in 1837

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[1] Reg. XI. 1816, s. 27.
[2] Reg. XI. 1816, s. 33.
[3] Reg. XI. 1816, s. 39.
[4] Reg. XI. 1816, s. 40.
[5] Reg. XI. 1816, s. 47.
[6] Reg. IV. 1821, s. 2.
[7] Reg. IV. 1821, s. 3.
[8] Reg. IV. 1821, s. 4.
[9] Reg. IV. 1821, s. 5.
[10] Reg. IV. 1821, s. 6.
[11] Reg. XIII. 1832, s. 5.

they were also empowered to forward to the Magistrate, for punishment, offenders convicted of any offence cognizable by them, as well as petty thefts.[1]

3. Bombay.

(1) Rise and Progress of the Adawlut System.

On the acquisition by conquest, in the year 1774, of the islands of Salsette and Caranja, and their dependencies of Hog and Elephanta, provision was made for the government of the former by the appointment of a Resident, or Chief, and Factors, and for the latter by that of a single Resident, with instructions from the Presidency of Bombay that disputes should be decided by arbitration, until the introduction of a more detailed regulation.

In the year 1794 the Court of Directors transmitted to the Presidency of Bombay a copy of the Regulations proposed by Lord Cornwallis for the internal Government of the Bengal Provinces. To this communication the Government of Bombay replied, in the following year, that they were clearly of opinion it would contribute greatly to the ease and happiness of the Natives if Courts of Adawlut were established in Bombay, Salsette, and Caranja.

Previously, however, to the introduction of these Adawlut Courts it appeared necessary to consult the best legal opinions, and also to have the sanction of the Supreme Government in respect to the competency of that of Bombay to establish rules for the administration of justice in the above-named places, under the same independence, as to the interposition of His Majesty's Court, as the Judicial Regulations of the Governor-General in Council were with regard to the controul of the Supreme Court at Fort William.

The Advocate-General of Bengal having been consulted, gave his opinion that there was no objection to the establish-

[1] Act XXXIII. 1837, s. 1.

ment of the Courts of Justice for the islands above named, by the concurring Authorities of the Supreme Government and that of Bombay; and accordingly, in the year 1797, the Governor-General in Council recommended and authorised the Bombay Government to constitute Courts of Civil and Criminal Judicature, on principles similar to those on which the Courts in the Presidency of Bengal had been established.

In the year 1799, during the Government of Mr. Duncan, a regular Code of Regulations was framed in compliance with these instructions, and in that year, and subsequently, a series of Courts was established on the system introduced by Lord Cornwallis into Bengal, as nearly as local circumstances would admit, with this important distinction, however, in the administration of criminal justice, that whereas in Bengal the Muhammadan criminal law was alone applicable, in the Bombay Presidency Hindús were tried according to their own laws, and Christians and Pársís had the benefit of the English laws in all criminal cases.[1] Judges' and Magistrates' Courts and Courts of Sessions were constituted at Tannah[2] and Surat;[3] the Magistrates were authorised to inflict imprisonment not exceeding fifteen days, or fine extending to 100 rupees, in trivial cases of abuse, assault, or affray, and to inflict thirty ratans, or one month's imprisonment in cases of petty theft.[4] The Registers of the Civil and Criminal Courts were invested with limited judicial powers to the extent of 200 rupees, but their decisions were not valid unless countersigned by the Judge;[5] and Native Commissioners were appointed for the trial of referred cases not exceeding 50 rupees in value, and to act as Arbitrators: an appeal lay from their decisions to the Judge.[6] Over all these Courts the Governor in Council,

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[1] Reg. V. 1799, s. 36, and Reg. III. 1800, s. 36.
[2] Reg. III. 1799, and Reg. V. 1799.
[3] Reg. I. 1800, and Reg. III. 1800.
[4] Reg. V. 1799, ss. 7, 8; Reg. III. 1800, ss. 7, 8.
[5] Reg. IV. 1800, s. 6.
[6] Reg. VII. 1802, ss. 2. 20.

in the separate department of Sudder Adawlut, and as Head of Criminal Judicature, had a right of supervision and controul, an appellate jurisdiction,[1] and a power of exercising pardon or mitigation of punishment.[2]

The decisions of the Register at Surat were, in 1802, made final in suits not exceeding 25 rupees in value, above which sum an appeal lay to the Judge.[3]

In 1805 a Provincial Court of Appeal and Circuit was established at Baróch, consisting of three Judges and a Register, and the Court of Session at Surat was abolished.[4] Judges and Magistrates were also appointed for the Zillahs of Baróch and Kaira in the same year.[5]

The great number of civil causes pending in the Adawluts at Surat and Baróch rendered it expedient, in 1807, to appoint an Assistant Judge at the former place, and to allow of reference to the Registers, both at Surat and Baróch, of suits not exceeding 500 rupees in value. The Judges of the same Adawluts were also authorised in 1808 to appoint Sudder Ameens, with a jurisdiction to try referred causes of the value of 100 rupees.[6] An Assistant Register was appointed in the same year at Surat, with a jurisdiction extending to suits of the value of 200 rupees, as well as Inferior Ameens, to whom petty suits under 50 rupees were to be committed.[7]

The Provincial Court at Baróch was empowered in 1808 to hear appeals from the decisions of the Zillah Courts of Surat, Baróch, and Kaira, in suits of the value of 400 rupees, that being the appealable amount from the decisions of the Tannah Adawlut to the Sudder Adawlut. Parties dissatisfied with the decisions of the Court of Appeal at Baróch were allowed

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[1] Reg. III. 1799, s. 19; Reg. I. 1800, s. 19; Reg. VII. 1800, s. 8; Reg. II. 1803, s. 3.

[2] Reg. V. 1799, s. 53; Reg. III. 1800, s. 53; Reg. III. 1802, s. 9.

[3] Reg. I. 1802, s. 6, and Reg. IX. 1802, s. 2.

[4] Reg. II. 1805, s. 3.

[5] Reg. II. 1805, ss. 2. 5.

[6] Reg. II. 1808, ss. 4, 5.

[7] Reg. II. 1808, s. 4.

to appeal again to the Sudder Adawlut, in suits of not less than 800 rupees in value.[1] It was also provided in the same year that appeals from the decisions of the Registers should lie in the first instance to the Zillah Judges, and thence to the Baróch Court of Appeal, in the event of the Judges' decree reversing the decision of the Register to the ordinary appealable amount from the Zillah Courts.[2]

In 1810 the Court of Session at Salsette was abolished, and the jurisdiction of the Provincial Court of Circuit and Appeal extended; at the same time this latter Court was removed from Baróch to Surat, and the office of Assistant Judge at the latter place abolished.[3]

A special Court for the trial of state offences, consisting of three Judges and two Muhammadan law officers, was constituted in 1812, to be under the controul of the Governor in Council.[4] An Assistant Register and Inferior Ameens were also appointed at Baróch and Kaira, and an Assistant Judge at the latter place, all with the same powers as those exercised by the like officers at Surat.[5] Subsequently the powers of the Provincial Court of Appeal were more fully defined, and it was declared to extend in its jurisdiction over the Zillahs of Salsette, Surat, Baróch, and Kaira.[6] In the same year the powers and duties of the Sudder Adawlut, particularly as regarded its jurisdiction as a Court of Appeal from the decisions of the Provincial Court were fully defined.[7] This, and a previous Regulation passed in this year,[8] enacted rules for appeals from the Sudder Adawlut to England, which need not here be noticed. The Provincial Court was authorised to admit a summary appeal, whatever might be the amount at issue, in all cases in which the Zillah Court might have refused to admit, or have dismissed without

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[1] Reg. II. 1808, s. 6.
[2] Reg. II. 1808, s. 7.
[3] Reg. III. 1810.
[4] Reg. I. 1812.
[5] Reg. V. 1812.
[6] Reg. VI. 1812.
[7] Reg. VII. 1812.
[8] Reg. IV. 1812.

investigation, on the ground of delay, informality, or other default, appeals from the decisions of the Registers' Assistants, Registers or Native Commissioners.[1] The Sudder Adawlut was also in this year empowered to receive any appeal, whatever might be the amount in dispute, from the decrees of the Provincial Court, in appealed cases, refused or dismissed without investigation on the like grounds, by such Courts.[2] At the same period the rules for the Provincial Court of Circuit, and for the Superior Criminal Tribunal of the Governor in Council, were made more comprehensive and definite.[3]

In the year 1813 the Statute 53d Geo. III. c. 155, s. 105, made British subjects resident in the Provinces punishable for assaults and trespass against the Natives of India, by the District and Zillah Magistrates; but the convictions of such Magistrates were made removable to the Recorder's Court by writ of Certiorari. The same Statute, by section 107, rendered British subjects, residing, trading, or holding immovable property in the Provinces, amenable to the Company's Civil Courts in suits brought against them by Natives. A right of appeal, however, to the Recorder's Court was reserved to them in cases which otherwise would be appealable to the Sudder Adawlut.

In 1815 Assistant Zillah and City Judges were appointed, and the jurisdiction of the Assistant Registers and Native Commissioners somewhat extended.[4]

An alteration deserving of notice took place in the year 1818, when the powers of the Magistrates were modified and defined: the office of Zillah Magistrate was transferred from the Zillah Judge to the Collector, the Assistant Collectors to be Assistant Magistrates,[5] and the Judges of the Zillah Courts were constituted Criminal Judges of their Zillahs,[6] with charge

[1] Reg. VI. 1812, s. 12.
[2] Reg. VII. 1812, s. 10.
[3] Reg. VIII. 1812, and Reg. IX. 1812.
[4] Reg. V. 1815.
[5] Reg. III. 1818, ss. 3, 4.
[6] Reg. III. 1818, s. 42.

of the Police at the chief stations. The Magistrates were to apprehend all persons charged with crimes or offences,[1] and were empowered to punish offenders convicted by them of petty offences of abuse, assault, or affrays, by imprisonment not exceeding fifteen days, or fine not exceeding 200 rupees, and to inflict corporal punishment not exceeding eighteen ratans, or imprisonment extending to one month, in cases of petty thefts.[2] The Criminal Judges were to take cognizance of charges brought before them by the Magistrates or their Police-officers, and to pass sentence of fine not exceeding 200 rupees, and, in cases of theft, of imprisonment not exceeding six months, and corporal punishment of thirty ratans; in cases deserving of more severe punishment they were to commit the prisoners for trial to the Court of Circuit.[3] The Superior tribunal had a controul over both Criminal Judges and the Court of Circuit,[4] and the sentences of the Superior tribunal were to be final in all cases of fine, imprisonment, or corporal punishment.[5] Assistants to the Criminal Judges were also appointed.[6]

A general system of Police was established throughout the territories subject to the Bombay Government in the same year,[7] by which the Police, which had theretofore been confided to Foujdárs and Thánádárs, was transferred to the Heads of Villages, aided by the Village Registers and Watchers; Kamavisdárs or native district officers, with an establishment of Police-officers; Zamíndárs; Ameens of Police; Kútwáls and their Peons; Magistrates and their Assistants; and Criminal Judges at the Sudder stations of the Zillah Courts, with their Assistants. This Police system was framed on the same plan as that enacted by Regulation XI. of 1816 of the Madras code already noticed.

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[1] Reg III 1818, s. 7.
[2] Reg. III. 1818, ss. 30, 31.
[3] Reg. III. 1818, s. 47.
[4] Reg. III. 1818, s. 65.
[5] Reg III. 1818, s. 17.
[6] Reg III 1818, s. 43.
[7] Reg. IV. 1818.

In 1819 Hindús were granted the benefit of their own law in trials for state offences, the Special Court having previously only administered Muhammadan law.[1]

In the year 1820 several important changes took place: the Provincial Court of Appeal was abolished,[2] and the Sudder Adawlut was transferred from Bombay to Surat, and was made to consist of four Judges,[3] a Register, and an Assistant Register, and law officers, and confirmed in all its former powers. It was directed that a special appeal should lie to the Sudder Adawlut from the decisions of the Zillah Courts, in all cases where such decisions were inconsistent with the laws or usages, or with judicial Precedent, or where it might appear that there was a want of jurisdiction, or that there was a failure of justice.[4] The Sudder Adawlut was also empowered to receive summary appeals from the Zillah Courts, in all cases in which the latter might have refused to admit an original suit or regular appeal, or dismissed it without investigation, on the ground of delay, informality, or other default.[5] The office of Assistant Zillah Judge was also done away with,[6] and appeals were ordered to lie to the Zillah Courts from all decisions of their Registers.[7] The Registers were empowered to try and determine appeals from Sudder Ameens or Native Commissioners, and to try and decide any suits above 500 rupees and not exceeding 1000 in value, referred to them by the Zillah Judges: an appeal lay in such referred suits to the Sudder Adawlut. The Registers were also authorised to try appeals, referred as above, from decisions of other Registers, in suits under 500 rupees.[8] In certain cases additional Registers were appointed to the Zillah Courts, who were also to be additional senior Assistants to the Criminal

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[1] Reg. X. 1819.
[2] Reg. V. 1820, s. 2.
[3] Reg. V. 1820, s. 4.
[4] Reg. V. 1820, s. 29.
[5] Reg. V. 1820, s. 30.
[6] Reg. VI. 1820, s. 2.
[7] Reg. VI. 1820, s. 3.
[8] Reg. VI. 1820, s. 6.

Judges.[1] In the same year the powers and functions of the Provincial Court of Circuit and the Superior tribunal were united in a Court to be called the Sudder Foujdary Adawlut, to be established at Surat, to consist of four Judges[2] assisted by law and ministerial officers, and to be empowered to take cognizance of all matters relating to Criminal Justice and the Police, and to call for the proceedings of the Criminal Judges or Zillah Magistrates.[3] The Judges were to go Circuit, and to hold two general gaol deliveries annually, one Judge to go the Circuit of all the Zillahs;[4] and their sentences were to be final, excepting in sentences of death or imprisonment for life, when they were to be referred to the Sudder Foujdary Adawlut.[5] The Criminal Judges were authorised to pass sentence of imprisonment, with or without labour, for a term not exceeding seven years; but all sentences of imprisonment for more than two years were to be referred to the Sudder Foujdary Adawlut.[6]

(2) System of 1827.

All the Bombay Regulations passed previously to the year 1827, with the exception of a few relating to customs and duties, were rescinded in that year, and the system of Judicature was entirely re-modelled in the code by which they were superseded; the groundwork, however, still remained the same, the new code being based upon the Bengal Regulations of 1793. The plan for the administration of justice which existed before 1827 had been formed under many difficulties, arising from local circumstances, and was found to be both complicated and insufficient: the new code, therefore, which was introduced by the Honourable Mountstuart Elphinstone, and was almost the closing act of his talented and efficient Govern-

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[1] Reg. VI. 1820, s. 8.
[2] Reg. VII. 1820, ss. 2—5.
[3] Reg. VII. 1820, s. 10.
[4] Reg. VII. 1820, s. 11.
[5] Reg. VII. 1820, s. 17.
[6] Reg. VII. 1820, s. 18.

ment, must be regarded as forming an important era in the history of the Bombay Presidency.

The system of 1827, which, with some few alterations, exists at the present time, was substantially as follows:—

Native Commissioners were appointed in each Zillah for trying and deciding civil suits, between 500 and 5000 rupees, where the parties were neither Europeans nor Americans.[1] The Zillah Judges were empowered to refer original suits to the Native Commissioners, according to the amount in dispute.[2] In all cases an appeal lay to the Judge, whose decision was final;[3] but he might refer the appeal to a Senior Assistant Judge, in which case the latter's decision was final if affirming the decision of the Court below; but if otherwise, an appeal lay to the Zillah Judge.[4] Zillah Courts were established, each to be presided over by one Judge.[5] An appeal lay from all their decisions in original suits to the Sudder Dewanny Adawlut;[6] but if the suit in the Zillah Court were against a British-born subject, residing, trading, or occupying immovable property in the Zillah, he might appeal to the Supreme Court, instead of to the Sudder Dewanny Adawlut, as provided by the 53rd Geo. III. c. 155, s. 107.[7] Special appeals were allowed from the decrees of the Zillah Courts to the Sudder Dewanny Adawlut when such decrees were contrary to the Regulations, or inconsistent with usage, or the Hindú or Muhammadan laws, or when they involved points of general interest not previously decided in the Sudder Dewanny Adawlut. The Sudder Dewanny Adawlut was authorised to admit summary appeals from the decrees of the Zillah Judges, or any inferior Court, which might have been rejected by the Zillah Judge on account of having been presented after the limited period, or on any other ground.[8]

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[1] Reg. II. 1827, ss. 37. 43.
[2] Reg. II. 1827, s. 37.
[3] Reg. IV. 1827, s. 72.
[4] Reg. IV. 1827, s. 72.
[5] Reg. II. 1827, s. 16.
[6] Reg. II. 1827, s. 5, Reg. IV. 1827, ss. 72. 74.
[7] Reg. IV. 1827, s. 72.
[8] Reg. IV. 1827, s. 97.

Assistant Zillah Judges were appointed; and where more than one, they were specified as Senior and Junior. The Senior Assistant Judges were to try suits, original or on appeal, referred to them by the Zillah Judge, not exceeding 5000 rupees in amount; and the Junior Assistant Judges, suits within the limit of 500 rupees.[1] Appeals from the decisions of Junior and Senior Assistant Judges lay in all cases to the Zillah Judge, whose decision was final, with the exception that in case of appeals from original decisions of Senior Assistant Judges, if the Zillah Judge differed in opinion, a further appeal within certain restrictions, lay to the Sudder Dewanny Adawlut.[2] Where the Senior Assistant Judge affirmed a decision in appeal from a lower Court, referred to him by the Judge, his decision was final; otherwise an appeal lay to the Judge, whose decision was final;[3] the Zillah Judge was also competent to admit special appeals from decrees passed on appeal by Senior Assistant Judges.[4] The Chief Civil Court of Appeal, styled the Sudder Dewanny Adawlut, and consisting of three or more Judges, a Registrar, Assistant Registrars, and law officers,[5] was to hear appeals from the Zillah Courts; and was also competent to call for all proceedings of the lower Civil Courts.[6] From the Sudder Dewanny Adawlut an appeal lay to the King in Council,[7] as will be hereafter noticed. It was also enacted that in any Court in which an European presided, he might derive assistance from respectable Natives, who should be employed as a Panchâyit, or sit as assessors, or more nearly as a jury, the decision being, however, vested in the presiding authority.[8]

The system of criminal judicature introduced at Bombay in the year 1827 comprises the establishment for the administration of Police; and the two branches are so interwoven one with another, that it becomes difficult to draw a line of separa-

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[1] Reg. II. 1827, s. 28.
[2] Reg. IV. 1827, s. 72.
[3] Reg. IV. 1827, s. 72.
[4] Reg. IV. 1827, s. 99.
[5] Reg. II. 1827, ss. 1, 2. 11. 13.
[6] Reg II 1827, s. 5.
[7] Reg. IV. 1827, s. 100.
[8] Reg. IV. 1827, s. 24.

tion between them. The apprehension of offenders, and the punishment of trivial offences, were given exclusively to the Magistrates and Officers of Police.[1] The Zillah Judges were made Criminal Judges in their respective Zillahs, for the trial of persons committed for that purpose by the Police Magistrates charged with crimes or offences of a less heinous nature than those reserved for the Court of Circuit.[2] The Assistant Zillah Judges were made Assistant Criminal Judges.[3] The Criminal Judges were empowered to inflict solitary imprisonment for six months, or to imprison with hard labour for seven years, and to inflict fifty stripes, or disgrace, fine, or personal restraint: sentences of imprisonment for more than two years were, however, to be referred to the Sudder Foujdary Adawlut. Senior Assistant Criminal Judges were limited in their powers to sentencing to imprisonment with labour for two years, and the infliction of thirty stripes, fines, disgrace and personal restraint: Senior Assistants were sometimes to be vested with the same powers as Criminal Judges. Junior Assistant Criminal Judges were only empowered to imprison, without labour, for two months, and to inflict fines and personal restraint.[4] The Criminal Judges were authorised to take into their own hands the trial of cases referred to their Assistants, and to mitigate or annul, but not enhance, their sentences. They were also empowered to employ their Assistants in the preparation of cases for trial by themselves.[5] A Court of Circuit was established, to be held by one of the Judges of the Sudder Foujdary Adawlut in rotation, at the Sudder station of each Zillah, for the trial of heinous offences not being committed against the State: this Court was to hold half-yearly sessions,[6] and was to pass final sentences, excepting those of

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[1] Reg. XII. 1827, s. 9. I have ranged the Magistrates and their subordinates in the Bombay Presidency under the head of Police, because in the Bombay Regulations they are called *Police* Magistrates, which is not the case in the other Presidencies; but the distinction is immaterial.

[2] Reg. XIII. 1827, s. 7.

[3] Reg. XIII. 1827, s. 8.

[4] Reg. XIII. 1827, s. 13.

[5] Reg. XIII. 1827, s. 12.

[6] Reg. XIII. 1827, s. 5.

death, transportation or perpetual imprisonment, in which cases, the sentences required the confirmation of the Sudder Foujdary Adawlut.[1] A Special Court was also established for the trial of political offences, to consist of three Judges, to be selected from those of the Sudder Foujdary Adawlut and the Zillah Courts: their proceedings were to be forwarded to the Governor in Council.[2] The Sudder Foujdary Adawlut, or Court of Supreme Criminal Jurisdiction, consisted of the same Judges as the Sudder Dewanny Adawlut,[3] and was empowered to superintend the administration of Criminal Justice and Police, to revise trials,[4] and to pass final sentences of death, transportation and perpetual imprisonment. The Governor in Council had a power reserved of granting pardons or mitigation of punishment.[5] All these Criminal Courts were authorised to call in the assistance of Natives, as in the Civil Courts;[6] and the law which they administered was set forth in a Regulation defining crimes and offences, and specifying the punishments to be inflicted for the same.[7]

The duties of the Police were, in the year 1827, directed to be conducted by the Judge and Collector of each Zillah, under the respective designations of Criminal Judge and Zillah Magistrate; the District Police-officers; and the Heads of Villages.[8] The Heads of Villages, with their Police establishments, were to be under the controul of the District Police-officers and Magistrates;[9] and they were empowered to apprehend offenders and send them to the District Police-officers,[10] to hold inquests,[11] and, in cases of abuse or assault, to inflict imprisonment not exceeding twenty-four hours.[12] The District Police-officers were under the immediate controul of the Zillah Magistrates: they were enjoined to apprehend offenders, and forward them to the Magistrate,[13] to investigate serious offences,

[1] Reg. XIII. 1827, s. 21.
[2] Reg. XIII. 1827, s. 4.
[3] Reg. XIII. 1827, s. 2.
[4] Reg. XIII. 1827, s. 27.
[5] Reg. XIII. 1827, s. 31.
[6] Reg. XIII. 1827, s. 38.
[7] Reg. XIV. 1827.
[8] Reg. XII. 1827, s. 1.
[9] Reg. XII. 1827, s. 48.
[10] Reg. XII. 1827, s. 50.
[11] Reg. XII. 1827, s. 52.
[12] Reg. XII. 1827, s. 49.
[13] Reg. XII. 1827, s. 3.

and to hold inquests;[1] and they also had the power of punishing trivial cases of theft, abuse, assault, or resistance to public officers, by fine not exceeding five rupees, or confinement for eight days.[2] The Magistrates and their Assistants were empowered to apprehend all persons charged with crimes or offences. If such persons were British subjects residing in the provinces, they were to be sent for trial to the Bombay Court of Judicature; and if offenders against the State, they were to be kept in custody, and the case reported to the Governor in Council;[3] all other persons they were authorised to try, and to punish by fine, imprisonment without labour for two months, to be enforced by the Criminal Judge, or flogging not exceeding thirty stripes, or to forward them to the Criminal Judge.[4] The Police Jurisdiction of the Criminal Judge extended over the town in which the Adawlut was situated, and a certain space around; and to him was given the exclusive superintendence of the Police throughout the Zillah.[5]

The general superintendence of the Police was vested in the Sudder Foujdary Adawlut.[6]

This plan for the administration of justice and the Police was the result of a revision of the former Regulations, and may be considered as the basis on which the present system has been erected. Some alterations have since taken place, which it will be necessary to enumerate.

(3) Alterations since 1827.

(*a*) *Civil Judicature.*

The first change of any importance in the system above described was the establishment in 1828 of a Court of Appeal for the Guzerat Zillahs,[7] subordinate to the Sudder Dewanny Adawlut; and the removal of the latter Court from Surat to

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[1] Reg. XII. 1827, s. 44.
[2] Reg. XII. 1827, s. 41.
[3] Reg. XII. 1827, s. 10.
[4] Reg. XII. 1827, ss. 12, 13.
[5] Reg. XII. 1827, s. 2.
[6] Reg. XIII. s. 27.
[7] Reg. VII. 1828, s. 1.

the Presidency.[1] This Court of Appeal consisted of three Judges, and took the place of the Sudder Dewanny Adawlut in respect of Appeals from the Zillah Courts at Guzerat.[2] A regular appeal lay from its decisions to the Sudder Dewanny Adawlut, when the decisions of the Zillah Courts were altered or reversed; and where such decisions were confirmed, when the amount at issue, or damages claimed, exceeded 5000 rupees.[3] Special appeals were to be open from the decrees of the Provincial Court to the Sudder Dewanny Adawlut, under the rules previously in force respecting special appeals.[4]

This Court of Appeal was abolished in 1830, and the jurisdiction of the Native Commissioners was extended to the cognizance of all original suits, and suits referred to them by the Judge or Assistant Judge at a detached station, excepting where public officers or Europeans or Americans were parties, in which case they were to be tried in the first instance by the Judge, or referred by him to his Assistants.[5] Senior Assistant Judges at detached stations were empowered to hear appeals from their decisions in suits not exceeding 5000 rupees in value; and the Government was authorised to grant the same powers to try such appeals to the Senior Assistant at the Sudder station when the state of judicial business required it.[6] Decisions on appeals from the Native Commissioners, tried before the Judge, or the Assistant Judge at a detached station, or before the Assistant Judge at a Sudder station, who might have jurisdiction granted him for trying such appeals, were to be open to appeal to the Sudder Dewanny Adawlut, when if the decree of the Native Commissioner were confirmed, the sum adjudged or at issue exceeded 3000 rupees; or if modified or reversed, the sum disallowed or at issue exceeded 1000 rupees.[7] A special appeal was also declared to be open to the Sudder Dewanny

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[1] Reg. VII. 1828, Preamble.
[2] Reg. VII. 1828, s. 5.
[3] Reg. VII. 1828, s. 19.
[4] Reg. VII. 1828, s. 20.
[5] Reg. I. 1830, ss. 1. 5.
[6] Reg. I. 1830, s. 4.
[7] Reg. II. 1830, s. 1.

Adawlut in all cases under the rules previously in force with regard to special appeals.[1]

In the following year some important alterations were made with regard to appeals. Decisions passed by Assistant Judges at Sudder stations upon appeals from the Native Commissioners were declared to be open to a further appeal to the Zillah Judge, if the decision of the Assistant Judge confirmed that of the Native Commissioner in suits not exceeding 2000 rupees, and altering or reversing it in suits not exceeding 1000 rupees; but above those sums the appeal lay to the Sudder Dewanny Adawlut. The decision of an Assistant Judge at a detached station, if confirming that of the Native Commissioner, was final in suits not exceeding 1000 rupees; but if reversing such decision, it was final only to the amount of 500 rupees. A special appeal to the Zillah Judge was reserved in suits below those amounts: suits above such Assistant Judge's final jurisdiction, but not exceeding 5000 rupees, were re-appealable to the Zillah Judge: if above 5000 rupees, to the Sudder Dewanny Adawlut. The Zillah Judge's decision on cases appealed to him was final, except by means of special appeal to the Sudder Dewanny Adawlut.[2] Suits tried in the first instance by Assistant Judges, as coming within the exceptions already mentioned respecting the jurisdiction of the Native Commissioners, were made appealable to the Zillah Judge, whose decision was final if confirmatory and in suits not exceeding 5000 rupees; but if otherwise, an appeal lay instead to the Sudder Dewanny Adawlut.[3] In the same year the office of Native Commissioner was ordered to comprise three gradations, and the officers holding them were directed to be styled respectively Native Judges, Principal Native Commissioners, and Junior Native Commissioners.[4] The Native Judges were to have cognizance, in addition to original suits of any amount, of appeals referred to them from original decisions of the two classes of Native

[1] Reg. II. 1830, s. 2.
[2] Reg. VII. 1831, s. 3.
[3] Reg. VII. 1831, s. 4.
[4] Reg. XVIII. 1831, s. 1.

Commissioners, in suits not exceeding 100 rupees; and the jurisdiction of the Principal and Junior Native Commissioners was limited to the cognizance by them of suits original, or referred to them, to the amounts respectively of 10,000 and 5000 rupees.[1]

The right of appeal from the Mofussil Courts to the Supreme Court, vested in British subjects by the 53d Geo. III. c. 155, s. 107, was abolished in 1836; and it was also enacted that no person, by reason of birth or descent, should be exempt from the jurisdiction of the Company's Courts,[2] or be incapable of being a Principal Sudder Ameen, Sudder Ameen, or Moonsiff, as the Native Judges and Principal and Junior Native Commissioners were then ordered to be designated.[3]

All suits in regard to tenures, and the interest connected therewith, and all suits respecting the right to possession of lands, or of the Watans of hereditary district or village officers, were, in the year 1838, directed to be brought in the Courts of Adawlut, and not in the Revenue Courts; and the Sudder Dewanny Adawlut was empowered to refer to the proper Court, proceedings which might have been taken in any Court not having jurisdiction.[4]

It was enacted in 1843 that special appeals should lie to the Sudder Dewanny Adawlut from all decisions passed on regular appeals by the subordinate Civil Courts, when inconsistent with law or usage, or the practice of such Courts, or involving doubtful questions of law, usage, or practice.[5]

In 1844 it was enacted that all suits within the competency of a Principal Sudder Ameen or Sudder Ameen to decide should ordinarily be instituted in the Courts of those officers; but that they might be withdrawn at the discretion of the Zillah Judges, who might try them themselves, or refer them to any competent subordinate Court. The Zillah Judges were also authorised to admit summary appeals from the

[1] Reg. XVIII. 1831, s. 3.
[2] Act XI. 1836, ss. 4, 5.
[3] Act XXIV. 1836, ss. 2, 3.
[4] Act XVI. 1838.
[5] Act III. 1843, s. 1.

orders of Principal Sudder Ameens and Sudder Ameens rejecting original suits cognizable by them.[1]

Joint Zillah Judges were appointed in 1845, to have the same powers and concurrent jurisdiction with the Zillah Judges, in cases received by them from those Judges.[2]

In 1853, Act III. of 1843 was repealed and it was enacted that special appeals should lie to the Sudder Court from any decision passed on regular appeal in any of the inferior Courts on the following grounds: viz. 1. A failure to decide all the material points in the case, or a decision contrary to law; 2. Misconstruction of any document; 3. Ambiguity in the decision itself; and, 4. Substantial error or defect in procedure or in the investigation of the case. No such special appeal was to lie on matters of fact.[3]

(b) Criminal Judicature.

In 1828 a Provincial Court of Circuit was established for the Zillahs in the Province of Guzerat, to have the same powers and duties as, but to be subject to, the Sudder Foujdary Adawlut,[4] which was removed to the Presidency. Sentences of death, transportation or imprisonment for life, passed by the Court of Circuit, were to be referred to the Sudder Foujdary Adawlut.[5]

This Provincial Court of Circuit was abolished in 1830, and the powers of Sessions Judges and Court of Circuit were given to the Criminal Judges,[6] and the Assistant Criminal Judges were appointed Assistant Sessions Judges.[7] Visiting Commissioners of Circuit were at the same time appointed, for holding State trials, and trials of a peculiar and aggravated nature,[8] with all the powers of the Court of Circuit and of the

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[1] Act IX. 1844, ss. 1, 2. 4.
[2] Act XXIX. 1845.
[3] Act XVI. 1853.
[4] Reg. VIII. 1828, s. 8.
[5] Reg. VIII. 1828, s. 15.
[6] Reg. III. 1830, ss. 1, 2, 3.
[7] Reg. III. 1830, s. 6.
[8] Reg. III. 1830, ss. 9, 10.

Special Court.[1] In the same year the Criminal Judges were directed to be styled Sessions Judges.[2]

An additional Judicial Commissioner of Circuit was appointed in 1833.[3]

Appeals from the Special Court for the trial of political offences, which formerly lay to the Governor in Council, were, in 1837, transferred to the Foujdary Adawlut, whose sentence was, however, required to be confirmed by the Government.[4]

In 1839 all sentences passed by Assistant Sessions Judges, whereby convicts became liable to imprisonment for more than two years, were directed to be confirmed by the Sessions Judges, and a reference to the Sudder Foujdary Adawlut was not to be necessary.[5]

In the year 1841 it was enacted that crimes against the State should be cognizable by the ordinary tribunals; but that the sentences and proceedings of the Courts in such trials should be reported to the Sudder Foujdary Adawlut, who again were to refer their sentences to the Government for confirmation.[6]

In 1845 it was enacted that any person convicted of adultery by any of the East-India Company's Courts in the Bombay Presidency should be sentenced to fine or imprisonment, or both, at the discretion of such Courts: no woman to be prosecuted for such offence but by her husband; and no person to be admitted to prosecute any man but the husband of the woman with whom such man was alleged to have committed adultery.[7]

Joint Sessions Judges were appointed in 1845, to have the same powers and concurrent jurisdiction with the Zillah

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[1] Reg. III. 1830, s. 11.
[2] Reg. IV. 1830, s. 2.
[3] Reg. VIII. 1833
[4] Act XXXVII. 1837.
[5] Act XIX. 1839.
[6] Act V. 1841.
[7] Act II. 1845.

Sessions Judges, excepting that they should not receive original complaints, but transact such criminal business only as they might receive from the Sessions Judges.[1]

In the year 1852 the Governor in Council was authorised to empower any one of the Judges of the Sudder Foujdary Adawlut to exercise all the powers of a Judge on Circuit, or of a visiting or Judicial Commissioner, and all or any of the powers or duties now vested in, and exercised by the Court of Sudder Foujdary Adawlut.[2]

(c) *Police Establishment.*

In the year 1828 the Assistant Criminal Judges stationed elsewhere than at Sudder Stations were invested with Police powers, and the Zillah Magistrates were directed to refer cases to them, instead of to the Criminal Judge.[3]

Several important changes took place in 1830. The Criminal Judges were divested of their Police powers, which were transferred to the Magistrates, with an exception, however, of the Judge of the City and Sudder station of Surat;[4] the penal jurisdiction of the Magistrates and their Assistants was extended to fine and imprisonment with hard labour for one year; all sentences of Assistant Magistrates of imprisonment above three months were, however, to be confirmed by the Magistrate, who was also to have a power of revision of all their sentences.[5] District Police-officers were empowered to punish petty offenders by fine not exceeding fifteen rupees, and confinement not exceeding twenty days.[6] Subsequently Sub-Collectors were given the same Magisterial powers and penal jurisdiction as Collectors;[7] and they were afterwards, in 1831, directed to be entitled in such capacity Joint Magis-

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[1] Act XXIX. 1845.
[2] Act XXIX. 1852.
[3] Reg. XII. 1828.
[4] Reg. IV. 1830, s. 1.
[5] Reg. IV. 1830, s. 3.
[6] Reg. IV. 1830, s. 5.
[7] Reg. V. 1830, s. 2.

trates.[1] In the same year Zillah Magistrates were authorised to punish by solitary imprisonment for one month;[2] and the visiting Judicial Commissioners were empowered to annul any sentence passed by a Zillah Magistrate.[3]

Joint Police-officers were appointed in the year 1833 in certain large towns, who were invested with a similar authority and jurisdiction to that of the District Police-officers, and were made subordinate to the Native Collectors.[4]

In 1835 the Governor of Bombay was authorised to appoint any military officer to be a Magistrate in one or more Zillahs, and to confer on Assistant Magistrates any of the powers of a Magistrate.[5]

Mahálkaris, or other officers exercising their functions, were, in the same year, made eligible to be invested by the Governor in Council with the same police powers within the towns and villages under their charge, as District Police-officers.[6]

In 1843 sentences passed by Magistrates on British subjects residing in the provinces for assaults and trespasses against Natives of India were made appealable, in the same manner as sentences passed by them in their ordinary jurisdiction; and when so appealed, they were no longer to be removable by Certiorari to the Queen's Court.[7]

In the year 1846 the Police jurisdiction of the City and Sudder station of Surat was vested in the Magistrate of the Zillah, in the place of being under the controul of the Judge and his Assistants.[8]

In 1851 the authority given to the Governor of conferring the powers of Magistrates on Assistant Magistrates was abolished, and he was empowered to appoint to any Zillah, uncovenanted Deputy Magistrates, either to exercise the

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[1] Reg. VIII. 1831, s. 1.
[2] Reg. VIII. 1831, s. 2.
[3] Reg. VIII. 1831, s. 5.
[4] Reg. III. 1833, s. 1.
[5] Act XIV. 1835.
[6] Act XX. 1835.
[7] Act IV. 1843.
[8] Act V. 1846.

powers of a covenanted Assistant under Regulation XII. of 1827, Regulation IV. of 1830, and Regulation VIII. of 1831, of the Bombay Code, and Act XXV. of 1839; or the full powers of a Magistrate, or as an officer of Police.[1]

In the year 1852, the Governor in Council was authorised to empower Patéls and other Heads of Villages to try minor offences.[2]

In the same year the Sudder Foujdary Adawlut was relieved from the superintendence of the Police, and it was vested in the Governor in Council, who might appoint such persons as he might think fit.[3]

In 1855 the appointment of Joint Police-officers was no longer restricted to certain towns, but they were to be appointed to any district the Governor in Council might think fit.[4]

Having thus traced the progress of the Judicial systems at the three several Presidencies, from their origin to the present time, I shall, in the following division of this Chapter, describe shortly the past and present jurisdiction of the Sudder and Mofussil Courts, and enumerate the various laws therein administered, concluding the account of these Courts by a summary statement of their actual constitution.

4. Jurisdiction of the Sudder and Mofussil Courts, and the Laws administered therein.

(1) Civil Jurisdiction.

The civil jurisdiction of the Courts established by the Honourable East-India Company originally extended over Natives only, British subjects never then residing in the provinces, except in their official capacities.

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[1] Act IV. 1851.
[2] Act XXVII. 1852.
[3] Act XXVIII. 1852.
[4] Act XV. 1855.

In the year 1787, however, it was declared, that whenever British subjects and others, "not being amenable to the jurisdiction of the Dewanny Courts," should institute a suit in such Courts against any person duly amenable to them, they should enter into a bond declaring themselves to be subject to their jurisdiction in respect of such suits, and binding themselves to abide by their award or decree.[1]

By Regulations subsequently passed, it was enacted that the jurisdiction of the Company's Courts should extend over all Natives and other persons not British subjects,[2] and also over such British subjects (excepting King's officers, and the covenanted civil servants of the Company and their military officers) as were suffered to reside at a distance from the seat of Government, on entering into a bond rendering themselves amenable to the Company's Courts in civil suits instituted against them by Natives or others, not British subjects, in which the amount claimed did not exceed 500 rupees.[3]

In the year 1813 it was enacted by Act of Parliament[4] that British subjects residing, or trading, or holding immovable property at a distance of more than ten miles from the Presidencies, should be subject to the jurisdiction of the Courts of the East-India Company in civil suits and matters of revenue, in like manner as the Natives of India, except that, in cases where an appeal would lie to the Company's Court exercising the highest appellate jurisdiction, such British subjects were to be allowed to appeal instead to the King's Courts at the Presidencies. The same Statute also gave a jurisdiction to Magistrates in cases of small debts not exceeding 50 rupees due from British subjects to Natives, and contracted without

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[1] Beng. Jud. Reg. VIII. 1787, s. 38.

[2] Beng. Reg. III. 1793, s. 7. Mad. Reg. II. 1802, s. 4. Bomb Reg. III. 1799, s. 6; Bomb. Reg. I. 1800, s. 6; Bomb. Reg. II. 1827, s. 21.

[3] Beng. Reg. III. 1793, s. 9; Beng. Reg. XXVIII. 1793, s. 2. Mad. Reg. II. 1802, s. 6. Bomb. Reg. III. 1799, s. 8; Bomb. Reg. I. 1800, s. 8.

[4] 53d Geo. III. c. 155, s. 107.

the jurisdiction of the several Courts of Requests established at Calcutta, Madras, and Bombay respectively.[1]

The Native Judicial Officers at all the Presidencies, previously to the year 1836, had no jurisdiction over Europeans or Americans in any civil suits, such persons being amenable only to the Courts presided over by European Judges.[2]

In the year 1836 Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, who might be British-born subjects or their descendants, were declared to be subject to the jurisdiction of the Company's Courts for all acts done by them as such, and to be liable to the same proceeding as though they were not of British birth or descent.[3]

In the same year, and afterwards in 1839, 1843, and 1850, Acts were passed which caused great dissatisfaction at the time, but the justice and good policy of which will hardly be questioned by any but those actuated by interested motives. The right of appeal to the Supreme Courts of Judicature, which had been previously reserved to British subjects under the 53d Geo. III. c. 155, s. 107, was abolished,[4] and it was enacted, in comprehensive terms, that thenceforth no person whatever should, by reason of place of birth, or by reason of descent, be, in any civil proceeding whatever, excepted from the jurisdiction of any of the Company's Civil Courts.[5]

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[1] 53d Geo. III. c. 155, s. 106. By the 4th Geo. IV. c. 81, s. 57, and the 3d & 4th Vict. c. 37, s. 54, officers and soldiers, being British subjects, were excepted from the operation of this rule.

[2] Beng. Reg. XXIII. 1814, ss. 13. 68; Beng. Reg. XXIV. 1814, s. 7; Beng. Reg. II. 1821, ss. 3. 5; Beng. Reg. V. 1831, ss. 15. 18. By Beng. Reg. IV. 1827, s. 2, Sudder Ameens had been given a jurisdiction over European subjects, European foreigners, and Americans, in suits in which they might be parties, when such suits were referred to them by the Zillah or City Judges; but this section was rescinded by Reg. V. 1831, s. 15. Mad. Reg. VII. 1827, s. 7. Bomb. Reg. II. 1827, ss. 37. 43; Bomb. Reg. I. 1830, s. 5.

[3] Act VIII. 1836, s. 2; Act XXIV. 1836, s. 4.

[4] Act XI. 1836, s. 1.

[5] Act XI. 1836, s. 2; Act XXIV. 1836, s. 5; Act III. 1839, ss. 1. 3;

In the year 1850 it was enacted that no Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, should be liable to be sued in any Civil Court for any act done by him in the discharge of his judicial duty; and that no Officer of any Court or other person bound to execute the warrants of any such Judges, Magistrates, Justices, Collectors, or others acting as aforesaid, should be liable to be sued for the execution of warrants which he would be bound to execute, if within the jurisdiction of the person issuing the same.[1]

(2) Criminal Jurisdiction.

The criminal jurisdiction of the Company's Courts was originally limited to Natives and Europeans not British subjects; and when British subjects committed, or were charged with committing, any acts, at a distance from the King's Courts, which rendered them liable to prosecution in those Courts, the Magistrates were enjoined to apprehend them, and having made inquiries into the circumstances, to despatch them to the Presidency for trial.[2]

The 53d Geo. III. c. 155, s. 105, which was passed in the year 1813, enacted, however, that it should be lawful for any Native of India resident within the British territories without

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Act VI. 1843, s. 7; Act VII. 1843, s. 5; Act III. 1850. It may be here remarked, that, by a Construction of the Sudder Dewanny Adawlut of Bengal, relative to Act XI. of 1836, it was declared that the said Act did not take away any exemption to which any person might be entitled by virtue of his office, and that consequently judicial functionaries who were not liable to civil actions in the Courts specified in the Act on account of alleged injuries committed by them in their official capacities before the passing of the Act, were not thereby rendered liable. See Construction S. D. A. No. 1051.

[1] Act XVIII. 1850.

[2] Beng. Jud. Reg. XXII. 1787, s. 12; Beng. Jud. Reg. XXVI. 1790, s. 12; Beng. Reg. IX. 1793, s. 19. Mad. Reg. VI. 1802, s. 19; Mad. Reg. IV. 1809, ss. 2, 3. Bomb. Reg. V. 1799, s. 18; Bomb. Reg. LII. 1800, s. 18; Bomb. Reg. III. 1818, s. 29; Bomb. Reg. XII. 1827, s. 10.

the towns of Calcutta, Madras, and Bombay, in case of any assault, forcible entry, or other injury accompanied with force, not being a felony, alleged to have been done against his person or property by a British subject, to complain to the Magistrate of the Zillah or district where the alleged offender resided, or the offence had been committed; and that the Magistrate should have power to take cognizance of such complaint, and to acquit or convict the person accused, and in case of a conviction, to punish the offender by fine not exceeding 500 rupees; but all such convictions were declared to be removable by writ of Certiorari into the King's Courts of Oyer and Terminer, and Gaol delivery.

Uncovenanted Criminal Judges at Madras have no jurisdiction over Europeans or Americans, such persons being amenable only to those Courts which are presided over by European Judges.[1]

In 1836 British-born subjects or their descendants, who might hold the appointment of Principal Sudder Ameen, Sudder Ameen, or Moonsiff, were made liable for acts committed by them as such to the same proceedings, and amenable to the same tribunals, as though they were not of British birth or descent.[2]

By a late Act of the Government of India, the removal by Certiorari of the convictions of British subjects in the provinces by the Zillah Magistrates under the 53d Geo. III. c. 155, was restricted to cases in which no appeal had been made against the sentences of the Magistrates to the Superior Courts of the East-India Company.[3]

The criminal jurisdiction of the Courts of the East-India Company extends also over native subjects of the British

[1] Mad. Reg. VIII. 1827, ss. 4, 5; Mad. Reg. III. 1833, s. 2; Act XXXIV. 1837, s. 2; Act VII. 1843, s. 43.

[2] Act VIII. 1836, s. 2; Act XXIV. 1836, s. 4.

[3] Act IV. 1843.

Government in India, charged with crimes committed in places out of the limits of the British territories.[1]

(3) LAWS ADMINISTERED IN THE SUDDER AND MOFUSSIL COURTS.

The law administered in the Courts of the Honourable East-India Company may be classed under five distinct heads.

1. The Regulations enacted by the Governments at the three Presidencies previously to the 3d and 4th Will. IV. c. 85, and the Acts of the Governor-General in Council passed subsequently to that Statute.

2. The Hindú Civil Law in all suits between Hindú parties regarding succession, inheritance, marriage, and cast, and all religious usages and institutions.[2]

3. The Muhammadan Civil Law in similar suits between Muhammadan parties.[3]

4. The Laws and Customs, so far as the same can be ascertained, of other Natives of India not being Hindús or Muhammadans, in similar suits where such other Natives are parties.

5. In cases for which no specific rule may exist the Judges are to act according to justice, equity, and good conscience.

6. The Muhammadan Criminal Law as modified by the Regulations. It must be remembered, however, that this law is confined to the Criminal Courts in the Bengal and Madras

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[1] Mad. Reg. XI. 1809; Mad. Reg. II. 1829; Mad. Reg. XII. 1832. Bomb. Reg. III. 1809; Bomb. Reg. IV. 1813.

[2] In cases where the parties are Hindús the law of Contract, Family customs, and the customs of particular parts of the country are, in practice, commonly recognised in modification of the Hindú law as reserved by the Regulations.

[3] In practice the Muhammadan law has been applied to a variety of cases, which may be arranged under the following heads: viz. Inheritance, Sale, Pre-emption, Gift, Wills, Marriage, Dower, Divorce, Parentage, Guardians and Minority, Slavery, Endowments, Debts and Securities, Claims, and Judicial matters.

Presidencies, being superseded at Bombay by a regular code. In Bengal, too, persons not professing the Muhammadan faith are, on claiming exemption, excepted from trial under the Muhammadan law for offences cognizable under the general Regulations.[1]

These laws will be severally treated of in a subsequent Chapter.

From the above accounts of the Courts of Judicature established by the Honourable East-India Company, it will be seen that the gradual changes which have taken place from the earliest period up to the present time, have tended in almost every instance to improve and simplify the constitution of the Courts; to extend our confidence in the Natives by admitting them to a considerable share in the executive department; and to reduce, so far as possible under the circumstances, the plans for the administration of justice adopted at the three Presidencies to one uniform system.

The following summary will exhibit at one view the actual constitution of the several Company's Courts in each Presidency, and will at once present to the reader the slight differences which exist between the three systems.

5. Summary account of the Company's Courts.

(1) Bengal.

(*a*) *Civil Courts.*

1. Moonsiffs are empowered to try and determine suits when the amount in dispute does not exceed 300 rupees.[2] A regular appeal lies from the decisions of the Moonsiffs to the Zillah and City Judges, whose decisions are final.[3] A summary appeal lies to the Zillah and City Judges, from the orders of Moonsiffs rejecting suits.[4]

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[1] Beng. Reg. VI. 1832, s. 5.
[2] Beng. Reg. V. 1831, s. 5.
[3] Beng. Reg. V. 1831, s. 28.
[4] Act XXII. 1838, s. 1.

2. Sudder Ameens are authorised to try and determine suits which do not exceed in value 1000 rupees.[1] An appeal lies from decisions in these Courts to the Zillah and City Judges, whose decisions are final.[2] A summary appeal from their orders rejecting suits also lies to the Zillah and City Courts.[3] A further or special appeal from their decisions in regular appeals lies to the Sudder Dewanny Adawlut.[4]

3. Principal Sudder Ameens are empowered to try and determine all suits, whether originally instituted in their Courts, or suits, original and on appeal from the lower Courts, referred to them by the Zillah or City Judges, whatever may be the amount in dispute.[5] An appeal lies from their decisions to the Zillah and City Judges; but where the suit involves a sum exceeding 5000 rupees the appeal lies direct to the Sudder Dewanny Adawlut.[6] A summary appeal from their orders rejecting suits lies to the Zillah and City Courts;[7] a second or special appeal also lies to the Sudder Dewanny Adawlut from their decisions on regular appeals.[8]

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[1] Beng. Reg. V. 1831, s. 15; Act IX. 1844, s. 1. The primary jurisdiction of the Sudder Ameen is stated in the Appendix B, No. 3, to the first report of the Indian Law Commissioners appointed in 1853, to *commence* in suits *above* 300 rupees in value. In *practice* this is no doubt the case; but in *fact* the original jurisdiction of Sudder Ameens established by Reg. V. of 1831, s. 15, in suits referred to them by the Zillah and City Judges remains intact. [2] Beng. Reg. V. 1831, s. 28.

[3] Beng. Reg. XXVI. 1814, s. 3; Act IX. 1844, s. 4.

[4] Act XVI. 1853, s. 4.

[5] Act XXV. 1837, ss. 1. 3; Act IX. 1844, s. 1. In the Appendix B, No. 3, to the first Report of the Indian Law Commissioners, appointed in 1853, the primary jurisdiction of Principal Sudder Ameens is stated to *commence* in all cases *above* 1000 rupees. In *practice* this is doubtless correct; but Act IX. of 1844, which enacts that all suits within the competency of Sudder Ameens to decide shall be *ordinarily* instituted in their Courts, does not do away with the primary jurisdiction of Principal Sudder Ameens, established by Act XXV. of 1837 in all suits, whatever may be the amount in dispute, referred to them by the Zillah and City Judges.

[6] Beng. Reg. V. 1831, s. 28; Act XXV. 1837, s. 4.

[7] Beng. Reg. V. 1831, s. 19; Act IX. 1844, s. 4. [8] Act XVI. 1853, s. 4.

Moonsiffs, Sudder Ameens, and Principal Sudder Ameens, are uncovenanted Judges.

4. The Zillah and City Courts have an original jurisdiction to an unlimited amount, commencing at 5000 rupees.[1] The Zillah and City Judges, when appeals from Moonsiffs and Sudder Ameens are so numerous as to encumber their files, can refer a specified number of cases by permission from the Sudder Dewanny Adawlut to the Principal Sudder Ameens.[2] They are also empowered to withdraw any cases from the files of the Sudder Ameens and Principal Sudder Ameens, for sufficient reason, and to try them themselves, or refer them to a subordinate Court.[3] An appeal lies from their original decisions to the Sudder Dewanny Adawlut.[4] A summary appeal from their orders rejecting suits lies to the Sudder Dewanny Adawlut;[5] and a second or special appeal also lies to the same Court from their decisions on regular appeals.[6]

5. The Sudder Dewanny Adawlut,[7] or highest Civil Court of Appeal, may call up from the Zillah or City Courts, and try in the first instance, suits exceeding 10,000 rupees in value.[8]

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[1] Beng. Reg. V. 1831, s. 27. [2] Beng. Reg. V. 1831, s. 16.

[3] Act IX. 1844, s. 22. In the Appendix B, No. 3, to the first Report of the Indian Law Commissioners appointed in 1853, it is said that, with the exception of these withdrawn cases, the jurisdiction of the Zillah and City Courts is *wholly appellate*. In *practice* this is quite true, because suits of unlimited amount are by Act IX. of 1844 directed *ordinarily* to be instituted in the Courts of the Principal Sudder Ameens. But the original jurisdiction of the Zillah and City Courts in all suits above the value of 5000 rupees, established by Reg. V. of 1831, s. 27, remains unaltered.

[4] Beng. Reg. V. 1831, s. 28; Beng. Reg. II. 1833, s. 5.

[5] Beng. Reg. XXVI. 1814, s. 3; Beng. Reg. II. 1833, s. 5.

[6] Act XVI. 1853, s. 4.

[7] There is also a Court of Sudder Dewanny Adawlut for the North-Western Provinces, established at Agra, which has the same powers in those Provinces as are vested in the Sudder Dewanny Adawlut at Calcutta. Beng. Reg. VI. 1831.

[8] Beng. Reg. XXV. 1814, s. 5, reserves the original jurisdiction of the Sudder Dewanny Adawlut in suits instituted in the Provincial Courts amounting to 50,000 rupees, the then appealable amount to the King in

The judgments of this Court are final, excepting where the amount in dispute exceeds 10,000 rupees, in which case an appeal lies to Her Majesty in Council.[1]

(*b*) *Criminal Courts.*

1. The Law officers of the Zillah and City Courts, Sudder Ameens, and Principal Sudder Ameens, have a limited criminal jurisdiction in cases of petty theft and trivial offences referred to them for trial by the Magistrates: their powers of punishment extend to fines of 50 rupees, and imprisonment with or without labour for one month.[2] An appeal lies from their sentences within one month to the Magistrate or Joint Magistrate, in cases within the limitation prescribed by sections 8 and 9 of Regulation IX. of 1793.[3]

2. Deputy Magistrates have a limited criminal jurisdiction extending to imprisonment for one month, with an additional period of one month's imprisonment in lieu of corporal punishment:[4] in offences requiring more severe punishment, the case is to be forwarded to the Magistrate, or Joint Magistrate.[5] When specially empowered, Deputy Magistrates have a power of imprisonment not exceeding one year.[6] Deputy Magistrates may also be invested with full magisterial powers by the local Government, and they may then punish to the same extent as Magistrates: viz., two years' imprisonment with hard labour, and an additional term of imprisonment for one year in lieu of corporal punishment.[7] An appeal lies from the sentences of Deputy

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Council, and has not been repealed. This amount having been since altered, and the Provincial Courts superseded by the Zillah and City Courts, the original jurisdiction of the Sudder Dewanny Adawlut is as stated in the text.

[1] See *infra*, Chapter IV. on Appeals to England.

[2] Beng. Reg. III. 1821, ss. 3, 4; Beng. Reg. V. 1831, s. 18; Beng. Reg. II. 1832, s. 3.

[3] Act XXXI. 1841, s. 2.

[4] Beng. Reg. XIII. 1797; Beng. Reg. IX. 1807; Beng. Reg. III. 1821, s. 2; Beng. Reg. II. 1834, s. 2; Act XV. 1843; Act X. 1854, s. 1.

[5] Beng. Reg. III. 1821, s. 2.

[6] Beng. Reg. III. 1821, s. 2; Act X. 1854, s. 2; Act XV. 1843.

[7] Act XV. 1843, s. 3.

Magistrates within one month to the Magistrate or Joint Magistrate, in cases within the limitations prescribed by sections 8 and 9 of Regulation IX. of 1793.[1]

The Law officers of the Zillah and City Courts, the Sudder Ameens, the Principal Sudder Ameens, and the Deputy Magistrates are uncovenanted Judges.

3. Assistant Magistrates have exactly the same jurisdiction and powers as Deputy Magistrates, the latter being vested with all the powers of the Assistants by Act XV. of 1843. Assistants however cannot be invested by the Government with full magisterial powers.

4. The Zillah, City, and Joint Magistrates have a limited criminal jurisdiction, and are empowered to sentence offenders convicted by them to imprisonment with hard labour for a term not exceeding two years: in cases requiring heavier punishment, they are to forward the prisoner to the Sessions Judge.[2] An appeal lies from their sentences within one month, in all cases beyond the limitation prescribed by sections 8 and 9 of Regulation IX. of 1793, to the Sessions Judge.[3]

5. The Sessions Judges are empowered to hold monthly gaol deliveries, and to try and sentence prisoners committed and forwarded to them by the Magistrates and Joint Magistrates.[4] All sentences of perpetual imprisonment and death, and in trials for offences against the State, are, however, to be confirmed by the Nizamut Adawlut.[5] They also try appeals from all convictions and original sentences of the Magistrates and their subordinates.[6] An appeal lies within three months from the sentences or orders of the Sessions Judges to the Nizamut Adawlut.[7]

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[1] Act XXXI. 1841, s. 2; Act X. 1854, s. 1.

[2] Beng. Reg XII. 1818, s. 2; Act II. 1834, s. 2.

[3] Act XXXI. 1841, s. 2.

[4] Beng. Reg. VII. 1831, s. 4; Act VII. 1835.

[5] Beng. Reg. IX. 1793, s. 58; Beng. Reg. IV. 1797, s. 13; Beng. Reg. I. 1829; Beng. Reg. VII. 1831, s. 6; Act VII. 1835; Act V. 1841.

[6] Act XXXI. 1841, s. 2; Act X. 1854, s. 1. [7] Act XXXI. 1841, s. 2.

6. The Nizamut Adawlut[1] is the Chief Criminal Court, and takes cognizance of all matters relating to criminal justice and the Police; it has alone the power of passing final sentences of death or perpetual imprisonment, and in other referrible cases.[2] Its sentences in crimes against the State are, however, to be reported to the Government, whose orders are to be awaited for three months before such sentences are carried into execution.[3] It is also empowered to annul or mitigate sentences of the lower Courts, and to call for the whole record of any criminal trial in any subordinate Court.[4]

(*c*) *Police Establishment.*

1. The Superintendents of Police have the same powers of punishment as those vested in the Zillah and City Magistrates.[5]

2. The Police Dárógháhs and the inferior Police-officers have no power given to them of adjudging imprisonment or inflicting punishment of any kind: their duties merely extend to the apprehending of persons charged with crimes and offences, and forwarding them to the Magistrates.

(2) MADRAS.

(*a*) *Civil Courts.*

1. Village Moonsiffs are authorised to try and finally determine suits for personal property preferred to them, where the amount in dispute does not exceed ten rupees.[6] They may also refer suits for personal property of any amount

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[1] There is also a Court of Nizamut Adawlut for the North-Western Provinces, which has the same powers in those Provinces as the Nizamut Adawlut at Calcutta. Beng. Reg. VI. 1831.

[2] Beng. Reg. IX. 1793, ss. 72. 77.

[3] Act V. 1841, s. 5.

[4] Act XXXI. 1841, ss. 3, 4; Act XIX. 1848, ss. 2—4.

[5] Beng. Reg. X. 1808; Beng. Reg. XVII. 1816; Beng. Reg. XX. 1817; Beng. Reg. XII. 1818, s. 6; Act XXIV. 1837, s. 1—4.

[6] Mad. Reg. IV. 1816, s. 5.

to a Village Panchâyit, both parties agreeing to such reference, the majority of the Panchâyit to decide, and the decision to be final.[1] They are further empowered to try and determine, as arbitrators, suits for personal property not exceeding 100 rupees, when voluntarily referred to them by the parties. In all these cases their decisions are final.[2]

2. District Moonsiffs are authorised to try and determine suits for Lákhiráj property of an annual value not exceeding 100 rupees, and for other land and personal property where the amount in dispute does not exceed 1000 rupees. Their decisions in all suits for land and for other property of a value over twenty rupees, are appealable to the Zillah Court,[3] but for personal property under that amount they are final.[4] They may refer suits for real and personal property of any amount to a District Panchâyit, both parties agreeing to such reference, for final decision.[5] They are also authorised to hear and determine suits as arbitrators, when voluntarily referred to them by both parties, for Lákhiráj lands, not exceeding in annual value 100 rupees, and other suits not exceeding 1000 rupees in value. Their decisions in such cases are final.[6] A summary appeal from their orders rejecting suits lies to the Zillah Judges, the subordinate Zillah Judges or Principal Sudder Ameens.[7]

3. Sudder Ameens have jurisdiction in suits for Lákhiráj lands not exceeding in annual value 250 rupees, and in all other suits where the amount in dispute does not exceed 2500 rupees.[8] An appeal lies from their decisions to the Zillah Courts.[9] A summary appeal from their orders rejecting suits also lies to same Courts.[10]

4. Principal Sudder Ameens are empowered to try and

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[1] Mad. Reg. V. 1816, ss. 2—11.
[2] Mad. Reg. IV. 1816, s. 27.
[3] Mad. Reg. V. 1825, s. 2; Act VII. 1843, s. 8.
[4] Mad. Reg. VI. 1816, s. 43.
[5] Mad. Reg. VII. 1816, ss. 2—11.
[6] Mad. Reg. VI. 1816, s. 57.
[7] Act XVII. 1838.
[8] Mad. Reg. III. 1833, s. 4.
[9] Act VII. 1843, s. 8.
[10] Act IX. 1844, s. 4.

determine suits where the amount in dispute does not exceed 10,000 rupees;[1] and also any appeals from District Moonsiffs referred to them by the Zillah Judges.[2] An appeal lies from their decisions to the Zillah Courts.[3] A summary appeal from their orders rejecting suits also lies to the Zillah Judges;[4] and a second or special appeal lies to the Sudder Adawlut from their decisions in regular appeals.[5]

Village Moonsiffs, District Moonsiffs, Sudder Ameens and Principal Sudder Ameens, are uncovenanted Judges.

5. Subordinate Judges have primary jurisdiction to the extent of 10,000 rupees.[6] They may also try and determine appeals from decisions of District Moonsiffs referred to them by the Zillah Judges.[7] An appeal lies from their decisions to the Zillah Courts.[8] A summary appeal also lies to the Zillah Courts from their orders rejecting suits;[9] and a further or special appeal lies to the Sudder Adawlut from their decisions in regular appeals.[10]

6. Assistant Judges are empowered to try, under the same rules as the Zillah Judges, any appeals referred to them by such Judges, excepting appeals from the Subordinate Judges and Principal Sudder Ameens.[11]

7. The Zillah Courts have an unlimited original jurisdiction commencing at 10,000 rupees, to the exclusion of all other Courts.[12] Zillah Judges may, when they see sufficient reason, withdraw any suits from the files of Sudder Ameens and Principal Sudder Ameens, and try them themselves or refer them to any Subordinate Courts.[13] They may also refer appeals from District Moonsiffs to Sudder Ameens and to the Subordinate Judges and Principal Sudder Ameens,[14] and

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[1] Act VII. 1843, s. 4.
[2] Act VII. 1843, s. 8.
[3] Act VII. 1843, s. 8.
[4] Act VII. 1843, s. 8.
[5] Act XVI. 1853, s. 4.
[6] Act VII. 1843, s. 4.
[7] Act VII. 1843, s. 8.
[8] Act VII. 1843, s. 8.
[9] Act VII. 1843, s. 8.
[10] Act XVI. 1853, s. 4.
[11] Act VII. 1843, s. 52.
[12] Act VII. 1843, s. 3.
[13] Act IX. 1844, s. 2.
[14] Act VII. 1843, s. 8.

appeals from the two latter to the Assistant Judges. Appeals, regular and summary, lie from the decisions and orders of the Zillah Courts to the Sudder Adawlut;[1] and a second or special appeal lies to the same Court from their decisions in regular appeals.[2]

8. The Sudder Adawlut, which is the Chief Civil Court of Appeal, has a power of calling up from the Zillah Courts, and trying in the first instance, suits in which the disputed amount exceeds 10,000 rupees.[3] The decisions of the Sudder Adawlut are final, except in suits where the disputed amount exceeds 10,000 rupees, when an appeal lies to Her Majesty in Council.[4]

(*b*) *Criminal Courts.*

1. District Moonsiffs have a limited criminal jurisdiction in petty offences and petty thefts, and may fine offenders 200 rupees, corporally punish them not exceeding 90 lashes of the cat-of-nine-tails, or imprison them, not exceeding one month. The Sessions Judges may overrule all their decisions.[5]

Moonsiffs are uncovenanted servants.

2. Magistrates, and Joint and Assistant Magistrates, are directed to apprehend persons charged with crimes or misdemeanours and send them for trial to the subordinate Courts:[6] they have a limited criminal jurisdiction, and are

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[1] Act VII. 1843, s. 9. [2] Act XVI. 1853, s. 4.

[3] Mad. Reg. XV. 1816, s. 2, reserves the original jurisdiction of the Sudder Adawlut in suits exceeding 45,000 rupees, the amount appealable at that time to the Governor-General in Council, instituted in the Provincial Courts, and has never been repealed. But as the new Zillah Courts have been substituted for the Provincial Courts, and the appeal and the appealable amount have been altered, the original jurisdiction of the Sudder Adawlut is as above stated.

[4] See *infra* Chapter IV. on Appeals to England.

[5] Act XII. 1854, ss 1. 6.

[6] Mad. Reg. IX. 1816, ss. 9 24.

empowered to inflict corporal punishment not exceeding 90 lashes of the cat-of-nine-tails; fines not exceeding 200 rupees, and to imprison for a term not exceeding one month.[1] Magistrates are also authorised to send offenders for trial, commitment, or confinement, to the Principal Sudder Ameens.[2] Magistrates may exercise the powers vested in Criminal Judges by Regulation X. of 1816, concurrently with the Subordinate Criminal Courts: *i. e.*, to imprison for one year and to inflict corporal punishment not exceeding 150 lashes with the cat-of-nine-tails; but from all their sentences, when exercising such additional powers, there is an appeal to the Sessions Judge within one month.[3]

Magistrates are covenanted servants.

3. Sudder Ameens have a limited criminal jurisdiction when granted to them by the Subordinate Judges and Principal Sudder Ameens, and they are to exercise the powers of those officers, but they are not empowered to take cognizance of cases commitable for trial by the Sessions Judge, who is authorised to overrule all sentences passed by Sudder Ameens.[4]

Sudder Ameens are uncovenanted Judges.

4. The Subordinate Judges, Magistrates exercising their powers, and Principal Sudder Ameens, are empowered to try cases which are not of so heinous a nature as to require to be sent to the Sessions Judge, and are authorised to inflict corporal punishment not exceeding 150 lashes with the cat-of-nine-tails, and to imprison with hard labour for a term not exceeding two years.[5] In other and more serious cases they are enjoined to commit the prisoner for trial by the Sessions

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[1] Mad. Reg. IX. 1816, ss. 32, 33. 35; Mad. Reg. XIII. 1832, s. 8.
[2] Act XXXIV. 1837, s. 1.
[3] Act VII. 1843, ss. 54, 55.
[4] Mad. Reg. III. 1833, s. 2; Act VII. 1843, s. 36.
[5] Mad. Reg. VI. 1822, s. 2.

Judge.[1] Their sentences are liable to revision by the Sessions Judge and the Foujdary Adawlut.[2]

Subordinate Judges are covenanted, the Principal Sudder Ameens uncovenanted Judges.

5. The Sessions Judges are empowered to hold permanent sessions for the trial of persons committed for trial by the Subordinate Judges or Principal Sudder Ameens.[3] Cases in which the Sessions Judges differ from the Fatwa of the law officers are to be referred to the Sudder Foujdary Adawlut;[4] as are also all sentences in capital cases,[5] and in trials for offences against the State.[6]

6. The Sudder Foujdary Adawlut is the Chief Criminal Court, and has cognizance of all matters relating to criminal justice and the Police;[7] it has alone the power of passing final sentences in capital and other referrible cases;[8] but its sentences for offences against the State are to be reported to the Government, whose orders are to be awaited for three months before such sentences are carried into execution.[9] It has also the power of revising, annulling, or mitigating the sentence of the lower Courts, and of calling for the whole record of any criminal trial in any subordinate Court.[10]

(*c*) *Police Establishment.*

1. The Heads of Villages are enjoined to apprehend and forward to the District Police-officers persons charged with crimes and offences;[11] they also have a limited criminal jurisdiction, and are authorised to punish offenders by confinement

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[1] Act VII. 1843, s. 29.
[2] Mad. Reg. VI. 1822, s. 6.
[3] Act VII. 1843, ss. 27. 37.
[4] Mad. Reg. VII. 1802, s. 22.
[5] Mad. Reg. VII. 1802, s. 27.
[6] Act V. 1841.
[7] Mad. Reg. VIII. 1802, s. 8.
[8] Mad. Reg. VII. 1802, s. 15; Mad. Reg. VIII. 102, s. 11.
[9] Act V. 1841, s. 5.
[10] Mad. Reg. I. 1825, s. 6; Act VII. 1843, s. 33; Act XIX. 1848, ss. 2—4.
[11] Mad. Reg. XI. 1816, s. 5.

not exceeding twelve hours in trivial cases of abuse and assault, and petty theft.[1]

2. The Heads of District Police and Tahsíldárs, besides being directed to apprehend and forward to the Subordinate Judges persons charged with crimes or offences,[2] are authorised to try and determine trivial cases of abuse and assault, and petty theft, and to punish the offenders by a fine not exceeding three rupees, or imprisonment without labour for three days.[3]

3. Ameens of Police may be appointed, with the same powers as Tahsíldárs or heads of Villages.[4]

(3) Bombay.

(*a*) *Civil Courts.*

1. Moonsiffs take cognizance of all suits, original or referred to them by the Zillah Judges, or Assistant Judges at detached stations, where the disputed amount does not exceed 5000 rupees.[5] An appeal lies from their decisions, if in the principal divisions of the Zillahs, to the Zillah Judges; or, if in the other divisions, to the Senior Assistant Judge at the detached station.[6] A summary appeal lies to the Zillah Courts from their orders dismissing suits.[7]

2. Sudder Ameens are empowered to try and determine original suits, where the amount in dispute does not exceed 10,000 rupees.[8] An appeal lies from their decisions, if in the

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[1] Mad. Reg. XI. 1816, s. 10; Mad. Reg. IV. 1821, s. 6.

[2] Mad. Reg. XI. 1816, s. 27; Act VII. 1843, s. 1.

[3] Mad. Reg. XI. 1816, s. 33; Mad. Reg. IV. 1821, ss. 4, 5; Mad. Reg. XIII. 1832, s. 5.

[4] Mad. Reg. XI. 1816, s. 40; Mad. Reg. IV. 1821, s. 2.

[5] Bomb. Reg. XVIII. 1831, s. 3; Act XXIV. 1836, s. 2.

[6] Bomb. Reg. I. 1830, s. 4; Bomb. Reg. VII. 1831, ss. 2, 3; Act XXIV. 1836, s. 2.

[7] Bomb. Reg. IV. 1827, s. 21.

[8] Bomb. Reg. XVIII. 1831, s. 3; Act XXIV. 1836, s. 2; Act IX. 1844, s. 1.

principal divisions of the Zillahs, to the Zillah Judges; or if in other divisions, and not exceeding 5000 rupees in amount, to the Senior Assistant Judge at the detached station.[1] A summary appeal lies to the Zillah Courts from their orders dismissing original suits.[2]

3. Principal Sudder Ameens are empowered to try and determine original suits, whatever may be the amount in dispute; and also appealed suits referred to them by the Zillah Judges from the decisions of Sudder Ameens and Moonsiffs, where the disputed amount does not exceed 100 rupees.[3] An appeal lies from all their decisions to the Zillah Judges.[4] A summary appeal also lies to the Zillah Courts from their orders dismissing original suits;[5] and a second or special appeal lies to the Sudder Dewanny Adawlut from their decisions in regular appeals.[6]

Moonsiffs, Sudder Ameens, and Principal Sudder Ameens, are uncovenanted Judges.

4. Assistant Judges at Sudder stations try such original suits as are excluded from the jurisdiction of the lower Courts, when referred to them by the Zillah Judges.[7] Such original suits are appealable to the Zillah Judge, whose decision is final if confirmatory of the original decision, and the amount in dispute do not exceed 5000 rupees; but otherwise they are appealable to the Sudder Dewanny Adawlut.[8] They also, when specially empowered by the Government, and the state of judicial business requires it, hear appeals from the decisions of the Principal Sudder Ameens, Sudder Ameens, and Moonsiffs, when the amount in dispute does not exceed 5000 rupees.[9] An appeal lies from their decisions on such

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[1] Bomb. Reg. I. 1830, s. 4; Bomb. Reg. VII. 1831, ss. 2, 3; Act XXIV. 1836, s. 2.

[2] Act IX. 1844, s. 4.

[3] Bomb. Reg. I. 1830, s. 5; Bomb. Reg. XVIII. 1831, s. 3; Act XXIV. 1836, s. 2.

[4] Bomb. Reg. I. 1830, s. 4; Bomb. Reg. VII. 1831, s. 2; Act XXIV. 1836, s. 2.

[5] Act IX. 1844, s. 4.

[6] Act XVI. 1853, s. 4.

[7] Bomb. Reg. I. 1830, s. 5.

[8] Bomb. Reg. VII. 1831, s. 4.

[9] Bomb. Reg. I. 1830, s. 4.

appeals, to the Zillah Judges, if confirming the judgment of the lower Court, and the amount in dispute should not exceed 2000 rupees; or if reversing or altering it, and it should not exceed 1000 rupeess; above which sums respectively the appeal lies to the Sudder Dewanny Adawlut.[1] Senior Assistant Judges at detached stations try such original suits, referred to them by the Judges, as are excepted from the jurisdiction of the lower Courts. Such original suits are appealable in the same manner as suits of a like description referred to the Senior Assistants at Sudder stations. They are also authorised to hear such appeals from the decisions of the lower Courts as do not exceed 5000 rupees in value.[2] If their decision on such appeals confirm the decree of the lower Court, and the amount in dispute should not exceed 1000 rupees, or if it alter or reverse it, and it should not exceed 500 rupees, it is final; above which respective sums the suit may be re-appealed to the Zillah Judges, if the disputed amount do not exceed 5000 rupees; but if above that sum, the appeal lies to the Sudder Dewanny Adawlut.[3] Summary appeals, from their orders rejecting suits, lie to the Sudder Dewanny Adawlut;[4] and second or special appeals lie to the same Court.[5]

5. The Courts of the Zillah Judges have jurisdiction in original suits of unlimited amount. Appeals lie from their original decisions and decisions on appeal, to the Sudder Dewanny Adawlut.[6] Summary appeals from their orders rejecting suits, and second or special appeals, also lie to the Sudder Dewanny Adawlut.[7] Joint Judges, where appointed, have similar powers, and are subject to the same rules as the Zillah Judges in all cases received by them from the latter.[8]

6. The Sudder Dewanny Adawlut, or Chief Court of Appeal in civil suits, has no original jurisdiction. The deci-

[1] Bomb. Reg. VII. 1831, s. 3.
[2] Bomb. Reg. I. 1830, s. 4.
[3] Bomb. Reg. VII. 1831, s. 3.
[4] Bomb. Reg. IV. 1827, s. 97.
[5] Act XVI. 1853, s. 4.
[6] Bomb. Reg. II. 1827, s. 5; Bomb. Reg. IV. 1827, s. 72.
[7] Bomb. Reg. IV. 1827, s. 97; Act XVI. 1853, s. 4.
[8] Act XXIX. 1845, s. 1.

sions of this Court are final, except in suits where the amount in dispute exceeds 10,000 rupees, when an appeal lies to Her Majesty in Council.[1]

(b) Criminal Courts.

1. Assistant Sessions Judges at the Sudder stations of the Zillahs, are empowered to try offenders committed for trial by the Magistrates or their Assistants when the cases are referred to them by the Sessions Judges,[2] to inflict fines, disgrace, and personal restraint, corporal punishment not exceeding thirty stripes (for theft only), and ordinary imprisonment with hard labour for a period not exceeding two years.[3] Their powers, however, may be enlarged by Government to the extent of adjudging imprisonment for seven years with hard labour, solitary imprisonment for six months, or flogging with fifty stripes;[4] but when a sentence is passed extending the ordinary limit, the confirmation of the Sessions Judge is necessary before execution.[5] Senior Assistant Judges at detached stations have like powers with Assistants at the Sudder stations,[6] which may be similarly extended by Government, in which cases their sentences also require the confirmation of the Sessions Judges; but they proceed at once to the trial of all cases occurring within their local jurisdiction that are committed to the sessions by the Magistrates or their Assistants,[7] without needing that they be referred specially by the Sessions Judges, reserving only such for trial at the half-yearly sessions held by the Sessions Judges at the detached stations as require a graver punishment than they themselves are authorised to adjudge.

2. The Sessions Judges are empowered to try all persons

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[1] See *infra* Chapter IV. on Appeals to England.
[2] Bomb. Reg. XIII. 1827, ss. 7. 12, 13; Bomb. Reg. III. 1830, s. 6.
[3] Bomb. Reg. XIII. 1827, s. 13.
[4] Bomb. Reg. XIII. 1827, s. 13.
[5] Act XIX. 1839.
[6] Bomb. Reg. III. 1830, s. 6.
[7] Bomb. Reg. XII. 1828.

committed for trial by the Magistrates or their Assistants for any offence, and to pass sentence for the same; but sentences of death, transportation, ordinary imprisonment exceeding seven years, or solitary imprisonment exceeding six months, or sentences in cases of perjury committed before themselves, and in trials for offences against the State, are to be referred for confirmation to the Sudder Foujdary Adawlut before execution.[1] The Sessions Judges have authority to take into their own hands the trial of cases which may have been delegated to their Assistants, and to mitigate or annul, but not enhance, their sentences. They are also empowered to employ their Assistants in the preparation of cases for trial by themselves.[2] The Sessions Judges are to hold half-yearly Sessions at the detached stations where their Assistants may be fixed.[3] They are also empowered, when the Judicial Commissioner is not on circuit within their Zillahs, to call for and amend the records of any case or proceeding of the Magistrates or their Assistants, when special reason may appear for so doing.[4] In Zillahs where Joint Judges have been appointed, the Sessions Judges refer cases to them for trial, as they do also suitable cases to their Assistants.[5]

3. The Judicial Commissioners of Circuit are empowered to hold trials of a peculiar or aggravated nature, which from any circumstance, Government may wish to be reserved for that purpose; and they are vested with powers of controul, inquiry, and general supervision, over the judicial administration of the Zillahs comprised in their tours.[6] They are also authorised to annul any sentence passed by Magistrates or their Assistants.[7]

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[1] Bomb. Reg. XIII. 1827, ss. 12, 13. 21; Bomb. Reg. III. 1830, s. 3; Bomb. Reg. IV. 1830; Bomb. Reg. VIII. 1831, s. 4.

[2] Bomb. Reg. XIII. 1827, s. 12.

[3] Bomb. Reg. III. 1830, s. 5.

[4] Bomb. Reg. VIII. 1831, s. 3.

[5] Act XXIX. 1845.

[6] Bomb. Reg. III. 1830, ss. 10, 11.

[7] Bomb. Reg. VIII. 1831, s. 5. The duties of Judicial Commissioners of Circuit appear to be in practice confined to the controul and supervision of the judicial administration and the revision of sentences.

Their sentences of death, transportation, or perpetual imprisonment, and in trials for offences against the State, are to be referred to the Sudder Foujdary Adawlut.[1]

4. The Sudder Foujdary Adawlut is the Chief Criminal Court, and is vested with the chief superintendence of criminal justice and Police, and with power to revise all trials in the lower Courts. It has alone the power of passing final sentences of death, transportation, or perpetual imprisonment, and in other referrible cases.[2] Its sentences, however, in trials for offences against the State, are to be reported to the Government, whose orders are to be awaited for three months before such sentences are carried into execution.[3] It is also empowered to call for and inspect the records of the lower Courts, and to mitigate or annul the sentences of such Courts, when brought before it in the course of any official proceeding.[4] The Governor in Council is authorised to empower any one of the Judges of the Sudder Foujdary Adawlut to exercise all the powers of a Judge on Circuit, or of a visiting or Judicial Commissioner, and all or any of the powers or duties now vested in and exercised by the Court of Sudder Foujdary Adawlut.[5]

(*c*) *Police Establishment.*

1. The Heads of Villages, besides being authorised to apprehend offenders and forward them to the District Police-officers, have a limited power of adjudging imprisonment not exceeding twenty-four hours, in trivial cases of abuse or assault.[6]

2. The District Police-officers, Mahálkarís, and Joint Police-officers are enjoined to apprehend persons charged with crimes and offences, and forward them to the Magis-

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[1] Bomb. Reg. XIII. 1827, s. 21; Bomb. Reg. III. 1830, s. 11; Act V. 1841.

[2] Bomb. Reg. XIII. 1827, s. 27.

[3] Act V. 1841, s. 5.

[4] Bomb. Reg. XIII. 1827, ss. 29, 30; Bomb. Reg. VIII. 1831, s. 7.

[5] Act XXIX. 1852.

[6] Bomb. Reg. XII. 1827, ss. 49, 50.

trates.[1] They are also empowered to punish petty offenders by fine not exceeding 15 rupees, or confinement not exceeding twenty days.[2]

The Heads of Villages, District Police-officers, Mahálkarís, and Joint Police-officers are uncovenanted servants.

3. Assistant Magistrates are empowered to try and sentence offenders to imprisonment for one year with hard labour, or solitary imprisonment for one month; but sentences for more than three months, or of solitary imprisonment, are to be confirmed by the Magistrate, who has, moreover, the power of revising all their sentences.[3] They have also the power of committing cases for trial before the Sessions Judges; and the Government can confer on them, by special authority, any of the powers of a Magistrate,[4] but their sentences are still subject to the revision of the Magistrates.

4. The Zillah Magistrates, Magistrates, and Joint Magistrates are empowered to apprehend persons charged with crimes and offences, and to punish them on conviction by fine, imprisonment, and stripes, the power of imprisonment to extend to one year with hard labour, or solitary imprisonment for one month.[5] In cases worthy of heavier punishment, the offender is to be committed for trial to the Sessions Judge.[6]

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[1] Bomb. Reg. XII. 1827, s. 43; Bomb. Reg. III. 1833, s. 1; Act XX. 1835.

[2] Bomb. Reg. IV. 1830, s. 5; Bomb. Reg. III. 1833, s. 1.

[3] Bomb. Reg. IV. 1830, s. 3; Bomb. Reg. VIII. 1831, s. 2.

[4] Act IV. 1851, s. 4.

[5] Bomb. Reg. XII. 1827, s. 9; Bomb. Reg. IV. 1830, s. 3; Bomb. Reg. VIII. 1831, s. 2.

[6] By the printed interpretation, dated 31st May 1830, on Bomb. Reg. III. 1830, s. 3.; Bomb. Reg. IV. 1830, s. 4; and Bomb. Reg. XII. 1827, s. 13, the Magistrates generally, possess authority to commit to the Sessions Courts as part of their ordinary duties.

CHAPTER IV.

APPEALS TO HER MAJESTY IN COUNCIL.

THE first right of appeal to the Sovereign in Council from the judgments of the Courts in India was granted by the Charter of Geo. I. in the year 1726, establishing the Mayors' Courts, from the decisions of which Courts, as we have seen, an appeal lay, first to the Governors in Council at the respective Presidencies, and thence to England, where the amount in dispute exceeded the sum of 1000 pagodas.

The right of appeal from the decisions of the Supreme Courts was first granted in the year 1773, by the 13th Geo. III. c. 63, the 18th section of which Statute enacted, that any person thinking himself aggrieved by any judgment or determination of the Supreme Court of Judicature at Bengal, should and might appeal from such judgment or determination to his Majesty in Council.

In the following year the Charter of Justice establishing the Supreme Court at Bengal was issued, and by its 30th section a right of appeal was reserved to suitors in civil causes, on their petition to the said Court.

No appeal was allowed under the Charter in suits where the value of the matter in dispute was under the sum of 1000 pagodas. This amount has since been altered, as will presently be noticed.

The 37th Geo. III. c. 142, empowering the King to establish the Recorders' Courts at Madras and Bombay, and being generally for the better administration of Justice at Calcutta, Madras, and Bombay, by section 16 provided that an appeal should lie to the King in Council from such Recorders' Courts.

By the Charter of the Supreme Court at Madras, a right of appeal was reserved from its decisions to dissatisfied

litigants; and the provisions regulating such appeal were similar to those contained in the Charter of the Supreme Court at Bengal. The value of the matter in dispute was required to be in excess of 1000 pagodas, for an appeal to be allowable.

The Charter of the Supreme Court at Bombay also reserved a right of appeal to the Sovereign in Council; with the difference, however, that the value of the disputed matter was to exceed 3000 Bombay rupees.

In all cases, by the provisions of each Charter of Justice of the Supreme Courts, a reservation is made of the power of the Sovereign in Council, upon the Petition of any person aggrieved by any decision of the Supreme Courts, to refuse or admit the appeal, and to reform, correct, or vary[1] such decision, according to the royal pleasure.

An appeal from the decisions of the Courts of the East-India Company to the Sovereign in Council was first allowed to suitors in such Courts in the year 1781, by the 21st Geo. III. c. 70, s. 21, under the provisions of which Act the Governor-General and Council, or some Committee thereof, or appointed thereby, were authorised to determine on appeals and references from the Country or Provincial Courts in civil causes. This Statute enacted, that the said Court might hold all such pleas and appeals, in the manner, and with such powers, as it theretofore had held the same, and should be deemed in law a Court of Record; and that the judgments therein given should be final and conclusive, except upon appeal to His Majesty, in civil suits only, the value of which should be of £5000 and upwards.

The limitation as to amount being the only restriction imposed by the 21st Geo. III. c. 70, and no rules having been made by His Majesty in Council for the conduct of the

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[1] See Smoult's Collection of Orders of the Supreme Court at Fort William in Bengal, p. 68. 12mo. Calc. 1834.

Indian Courts in dealing with the applications of appellants, it became necessary to declare by Regulation the time within which the petition of appeal was to be presented, to require security for costs, and to make divers other rules, by which suitors were to be bound. Regulation XVI. of 1797 of the Bengal code was accordingly passed, enacting that the previous Regulation,[1] which declared that the decrees of the Sudder Dewanny Adawlut were final, had no reference to the appeal to His Majesty in Council allowed by the 21st section of the Statute 21st Geo. III. c. 70: the same Regulation enacted certain rules for the conduct of appeals. The amount of the judgment appealed against was to exceed £5000 sterling, exclusive of costs, ten current rupees to be considered equivalent to £1 sterling. This amount has since been altered, as will be seen in the sequel.

In 1801[2] the constitution of the Sudder Dewanny Adawlut at Bengal was entirely changed, and the Governor-General was declared no longer to be a Judge of the Court, as has already been mentioned. Although, however, the Governor-General had thus divested himself of the power of administering justice in Bengal, he for some time exercised an appellate jurisdiction in cases decided by the Sudder Adawlut at Madras, such appeal having been expressly reserved by the Regulations of 1802.[3]

In the year 1818 the Governor-General relinquished the authority, theretofore exercised by him, of receiving appeals from the decisions of the Sudder Adawlut at Madras; and all the rules relating to such appeals to the Supreme Government were rescinded. At the same time a provision was made that an appeal should lie from such decisions to the King in Council, and rules were framed for the conduct of the appeals, similar to those contained in Regulation XVI. of 1797 of the

[1] Beng. Reg. VI. 1793, s. 29.
[2] Beng. Reg. II. 1801.
[3] Mad. Reg. V. 1802, ss. 31—36.

Bengal code.[1] No restriction, however, as to the appealable amount was fixed; and accordingly, in many instances, the appeals from Madras were for sums below £5000.

At Bombay, by the Regulations passed previously to the year 1812 for the establishment of the general Courts of Justice at Salsette, Surat, Baróch, and Kaira, for the trial of civil suits, an appeal from the decisions of either of those Courts, and from that of the Provincial Court of Appeal, was allowed to the Sudder Adawlut at Bombay, but to no other ultimate tribunal.[2] No reservation had been in any instance made of an appeal to the Governor-General and Council, or to the King in Council under the provisions of the Statute 21st Geo. III. c. 70, s. 21. By a Regulation passed in the above year, however, rules were enacted for regulating appeals from the Court of Sudder Adawlut to His Majesty in Council, in suits of the value of £5000, exclusive of costs.[3]

In the same year a Regulation was also passed for defining the powers and duties of the Sudder Adawlut, and the rules contained in the previous Regulations were re-enacted;[4] in the year following, however, all these rules were rescinded, doubts having arisen as to the legal competency of the Government

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[1] Mad. Reg. VIII. 1818. This Regulation, declaratory that appeals should in future be transmitted from the Madras Sudder Adawlut to the King in Council, arose from the recognition that the Governor-General had no power to decide appeals in the last resort. An appeal from the decision of the Sudder Adawlut seemed of right to lie to the King in Council. A question on this subject was referred to the Advocates-General of the three Presidencies, who were of opinion that the appeal would lie of right to the King in Council, from Madras and Bombay, from any final decision, for any amount. The reference, it appears, arose on a case of some magnitude, which had been appealed to the Governor-General in Council; and the result was, that his Lordship in Council declared that the appeal was no longer to be made to him, and directed the Madras Government to publish the above Regulation.—See Mr. R. Clarke's Evidence before the House of Lords in 1830, No. 1543, p. 180, 4to. Edit.

[2] Bomb. Reg. IV. 1812, Preamble. [3] Bomb. Reg. IV. 1812, ss. 2–7.

[4] Bomb. Reg. VII. 1812, ss. 31—36.

of Bombay to admit of appeals from the Sudder Adawlut to the King in Council under the Statutes of the realm.[1]

Regulation V. of 1818 of the Bombay code was passed to remedy the defect in the legislature caused by the improvident rescission of the rules above mentioned. This Regulation provided for the reception and transmission of appeals from the Court of Sudder Adawlut to His Majesty in Council, and certain rules, similar to those already noticed, were enacted, regulating the same: the restrictive clause as to the appealable amount was, however, omitted.

The Governor of Bombay relinquished the judicial authority in 1820,[2] and the Sudder Adawlut was reconstituted as in the other Presidencies: the right of appeal to the Sovereign in Council, established by Regulation V. of 1818, however, remained untouched.

In the year 1827, when the new code of Bombay Regulations was promulgated, fresh provisions were made for appeals from the judgments of the Sudder Dewanny Adawlut; the provisions, however, were, in fact, the same as those already in force, and the restriction as to the value of the matter in dispute was again most unaccountably omitted.[3] Thus, from the year 1818, there was no restriction in this particular, and the consequence was, that a large number of appeals were forwarded to this country from Bombay, involving such trivial amounts as to become a source of great grievance to the respondents.

In all the Presidencies reservation was made by the respective Regulations, of the Sovereign's right to reject or receive all appeals, notwithstanding any provisions in the said Regulations.

Having thus far considered historically the several provisions of the Statutes, Charters, and Regulations, it becomes requisite to inquire into their efficiency when brought into

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[1] Bomb. Reg. II. 1813.

[2] Bomb. Reg. V. 1820.

[3] Bomb. Reg. IV. 1827, s. 100.

operation. At the very outset we find that these enactments, especially as applied to the appeals from the Adawlut Courts, were almost totally useless: not that they were unskilfully framed, or that they were inapplicable to the furtherance of justice; but the ignorance of the natives of the steps necessary to be taken to bring an appeal before the Privy Council, and the very slight intercourse with Europeans enjoyed by many of the appellants, prevented the enactments relating to appeals from being either profitably or extensively applied.

The appellants from the decisions of the Supreme Courts, never laboured under the disadvantages which pressed upon the suitor considering himself aggrieved by the decree of a Court of Sudder Dewanny Adawlut. Rules for appeals were laid down in the Charters of Justice, and in the Rules and Orders of the Courts themselves, which had received the sanction of his Majesty in Council. The native suitors were, almost in every case, in the habit of close intercourse with Europeans; the proceedings of the Supreme Courts resembled those in England; and the suits were carried on in those Courts by English Counsel and Attornies, the latter of whom, in a case of appeal, appointed a Solicitor in this country, under whose management the appeal was conducted. On the other hand, the appellants from the Sudder Dewanny Adawluts, who were generally natives of rank and wealth, living in the Mofussil, and who, having but little intercourse with Europeans, were conversant more or less only with their own respective laws and the Regulations enacted by the Company's Government, entertained but vague notions of the laws and constitution of this country; and, until lately, their legal advisers, and the practitioners in the Courts, were natives equally ignorant with themselves. The papers in an appeal from the Supreme Courts were obtained by the Attorney who conducted the case in India, and forwarded by him to an agent in England: the Supreme Court Attorney was thus a link of connexion between the appellant and the Privy Council. No such connecting link existed in the case of the appellants from the Sudder

Dewanny Adawluts: the transcript records were prepared by the Government, and transmitted to England; and when once placed in the hands of Government, the Vakeels of the appellants were of no further use; and they themselves being ignorant that agents were requisite in England, or that any other steps were necessary to be taken, the appeals in consequence stood still. The parties in India having conformed, to the utmost of their ability, to the Regulations of the Government, concluded, that when the documents under the seal of the Court were transmitted through the Indian Government to this country, the Court of the Sovereign in Council would take the case into consideration, and return a decision thereon. Such expectation was clearly in conformity with the practice that obtained, as regarded Madras, up to the year 1818, before which time, as we have seen, an appeal was admitted from the Madras Sudder Adawlut to the Governor-General in Council at Calcutta. When the documents, properly attested, &c., were sent to Calcutta, a decree was in due time returned, confirming or reversing that of the Sudder Adawlut at Madras, without any thing being required to be done by the parties. Thus, when appeal cases were transmitted to England, the parties patiently waited for a decision, but in vain; and in many instances the property in dispute became eaten up by public and private debts, and the litigants were either ruined or greatly impoverished.[1]

Whilst things remained in this state, the right of appeal was in fact productive of harm instead of benefit, inasmuch as the parties made deposits, which were not released, even in cases where the suits had been compromised. Mr. R. Clarke, in his Evidence before the House of Lords in 1830,[2] mentions four cases in which the parties had compromised their suits in

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[1] See Mr. R. Clarke's Evidence before the House of Lords in 1830, No. 1524, p. 178, 4to. Edit.

[2] See Mr. R. Clarke's Evidence before the House of Lords in 1830, No. 1522, p. 177, 4to. Edit.

India: they sent notice of their compromise to England, through the same channel by which they had forwarded their appeals. In one case the total amount litigated was held in deposit, and in the others the sum deposited for fees, which amounted to about £1000, was in the same predicament. The restoration of the deposits was refused to the parties in India, because the Courts there had no knowledge of what had been done by the Court appealed to in England with regard to the suits.

From the year 1773, when, as we have seen, the power of appeal from the Supreme Courts in India was originally allowed, until the year 1833, when the Statute 3d and 4th Will. IV. c. 41, was passed, about fifty appeals were instituted, the first being in 1799.

It was about the year 1826 that the late Sir Alexander Johnston, while engaged in some antiquarian researches,[1] discovered that there were a large number of cases involving questions of native law of great importance, which had been in appeal from the Courts in India before the Privy Council for a great many years, and that they had not been heard in consequence of the ignorance of the parties as to the proceedings necessary to be taken in this country. Subsequently to this an application was made by the Court of Directors to the Privy Council for permission to bring forward appeals on behalf of suitors; and the transcripts of the proceedings in India, accumulated in the Privy Council Office, were sent to the East-India House, for the purpose of being examined, and a report drawn up. The East-India Company's Solicitor accordingly sent in a report to the Honourable Court, stating the cause of action, the names of the parties, the amount sued for, and all other requisite particulars respecting each appeal, of which the records had been received at the office of the Privy Council: the report was forwarded to the Board of

[1] Transactions of the Royal Asiatic Society, Vol. III. Appendix 2, p. x. note.

Controul for the purpose of being laid before the Privy Council.

It appeared, on examination of this report, that the earliest appeal from Bengal was from a decision that was pronounced in the year 1779. Twenty-one appeals in all were pending from Bengal, ten from Madras, and seventeen from Bombay. None of those from Madras and Bombay were of earlier date than the year 1818, according to the provisions of the Regulations;[1] no appeals having been instituted from Bombay whilst the Regulations of 1812, allowing the right, were in force.

The Honourable Court of Directors, having thus taken the first step in the right direction towards remedying the failure of justice, several learned persons were consulted as to the best means of forwarding the appeals. Accordingly, in the year 1832, Sir James Mackintosh, Sir Edward Hyde East, and Sir Alexander Johnston, were requested by the Board of Controul to report on the best course to be adopted in order to cause all the old appeals to be put in train for decision, and Mr. Richard Clarke, formerly of the Madras Civil Service, was engaged to arrange all the papers connected with the different appeals; and a report was drawn up and submitted to the Court of Directors, of all the appeals which were then lying in the Privy Council Office, and in which no proceedings were being taken by the parties.

The attention of the legislature had now been called to the subject, and the 3rd and 4th Will. IV. c. 41, was passed on the 14th August, 1833. This important Act provided that the President for the time of His Majesty's Privy Council, the Lord High Chancellor of Great Britain for the time being, and such of the members of His Majesty's Privy Council as should from time to time hold any of the Offices following, that is to say, the Office of Lord Keeper or First Lord Commissioner of the Great Seal of Great Britain, Lord Chief

[1] Mad. Reg. VIII. 1818; Bomb. Reg. V. 1818.

Justice or Judge of the Court of King's Bench, Master of the Rolls, Vice-Chancellor of England, Lord Chief Justice or Judge of the Court of Common Pleas, Lord Chief Baron or Baron of the Court of Exchequer, Judge of the Prerogative Court of the Lord Archbishop of Canterbury, Judge of the High Court of Admiralty, and Chief Judge of the Court in Bankruptcy, and also all persons members of His Majesty's Privy Council, who should have been President thereof, or held the Office of Lord Chancellor of Great Britain, or should have held any of the other Offices above mentioned, should form a Committee of His Majesty's said Privy Council, and should be styled, "The Judicial Committee of the Privy Council:" provided, nevertheless, that it should be lawful for His Majesty, from time to time, as and when he should think fit, by his Sign Manual to appoint any two other persons, being Privy Councillors, to be members of the said Committee. It was also enacted by the 3rd section of the same Act, that all appeals, or complaints in the nature of appeals, which by virtue of any law, statute, or custom, might be brought before His Majesty in Council, from or in respect of the determination, sentence, rule, or order, of any Court, Judge, or Judicial Officer, and that all such appeals then pending or unheard, should be referred by His Majesty to the said Judicial Committee, and a report or recommendation thereon should be made to His Majesty in Council for his decision thereon, as theretofore had been the custom in references of a like nature. By the 22nd Section of the same Act, it was provided, that as various appeals had been admitted by the Courts of Sudder Dewanny Adawlut at the three Presidencies, and the transcripts of the proceedings had been from time to time transmitted to the Privy Council Office, but the suitors had not taken the necessary measures to bring on the same to a hearing, His Majesty in Council might direct the East-India Company to bring appeals from the Sudder Dewanny Adawluts of the three Presidencies to a hearing, and to appoint Agents and Counsel for the different parties in such appeals,

and make such orders for the security and payment of costs as His Majesty in Council should think fit; and that such appeals should be heard and reported to His Majesty in Council, and determined in the same manner, and the decrees of His Majesty in Council were to have the same force and effect, as though the same had been brought to a hearing by the direction of the parties appealing in the usual course of proceeding. It was, however, provided, that such last-mentioned powers should not extend to any appeals from the said Courts of Sudder Dewanny Adawlut, other than appeals in which no proceedings had been or should thereafter be taken in England, on either side, for a period of two years subsequent to the admission of the appeal by such Court of Sudder Dewanny Adawlut. This 22nd section was repealed by the 8th and 9th Vict. c. 30, as will be presently seen. The 24th section empowered His Majesty in Council to make rules and orders for regulating the mode, form, and time of appeal to be made from the decisions of the Sudder Dewanny Adawluts, and any other Courts of Judicature in India, and for the prevention of delays in making or hearing such appeals, and as to the expenses and the amount of the property in respect of which the appeal might be made. By the 30th section it was enacted that two members of the Privy Council, who should have held the office of Judge in the East Indies or any of His Majesty's dominions beyond the seas, might attend the sittings of the Judicial Committee of the Privy Council as Assessors, but without votes, at a salary of £400 a year. These appointments are at present vacant.

By this Statute parties in appeals from India were insured a certain and speedy hearing; and efficiency was given to the pre-existing Laws and Regulations, which had, by long experience, been found wholly ineffective, and indeed, as we have seen, productive of something more than a mere failure of justice. The appointment of retired Indian Judges under this Act as Assessors of the Court, brought an amount of knowledge and experience to bear upon most of the questions

arising in Indian appeals, which could not by any other means have been rendered so readily available.[1]

Three Orders in Council were made in the year 1833, under the 24th section of the preceding Act. By the first, dated the 4th September, it was ordered that the East-India Company should bring to a hearing before the Judicial Committee of the Privy Council all the cases of appeal mentioned in a list appended to the said order, the same being appeals from Courts of Sudder Dewanny Adawlut in the East Indies, in which no proceedings had been taken in England, on either side, for a period of two years subsequent to the admission of the said appeals respectively. The list referred to contained eighteen cases from Bengal, ten from Madras, and fifteen from Bombay. The second Order, dated the 18th November, gave further directions in pursuance of the said Act, and ordered

[1] It is surprising that the Government of this country should never have thought it necessary to appoint any of the retired Judges of the East-India Company's Service to sit in the Judicial Committee of the Privy Council as Assessors in Indian appeal cases, since, in appeals from the decisions of the Company's Courts, the peculiar experience of the Judges of the Queen's Courts is necessarily applicable to such cases only as involve points of Hindú or Muhammadan law. A large proportion of the suits in the Courts of the East-India Company, including almost all those which relate to landed property in the Mofussil, are connected with the revenue; but the Statute 21st Geo. III. c. 70, s. 8, expressly forbids the Supreme Court at Calcutta from having jurisdiction "in any matter concerning the revenue, or concerning any act or acts ordered or done in the collection thereof, according to the usage and practice of the country, or the Regulations;" and the Charters of the Supreme Courts at Madras and Bombay contain similar prohibitory clauses (Mad. Chart. s. 23; Bomb. Chart. s. 30). Again, all other questions which turn upon the Regulation Law applying to persons and things without the jurisdiction of the Supreme Courts can obviously only be determined by the Courts of the East-India Company. It follows then, of course, that in every one of these instances the subject matter of an appeal from the decision of a Company's Court is necessarily as foreign to Assessors appointed from the retired Judges of the Supreme Courts, as to the other members of the Judicial Committee, whilst a Judge of the Chief Courts of the East-India Company would at once be able to remove the doubts and difficulties by which such questions are usually surrounded.

that the said East-India Company should appoint Agents and Counsel, when necessary, for the different parties in the appeals mentioned in the said list, to transact and do all things as had been usual by Agents and Counsel for parties in appeals to His Majesty in Council, from the colonies or plantations abroad. The third Order, of the same date as the preceding one, directed that the said Company should be entitled to demand payment of their reasonable costs of bringing appeals to hearing by virtue of the said Act, to such an amount and from such parties, and should have such lien for the said costs upon all monies, lands, goods, and property whatsoever, and upon all deposits which might have been made, and all securities which might have been given in respect of such appeals, as the Judicial Committee of the Privy Council should direct.

Under the same Act His Majesty did, by his Order in Council, dated the 16th January 1836, approve certain Rules for the regulation and conduct of appeals, and amended a portion thereof by another order of the 10th August in the same year; the Rules contained in these Orders, were, however, never acted upon, and they were cancelled and rescinded by Her present Majesty in Council, by an Order dated the 10th April 1838, which substituted other Rules and Regulations applicable to Indian appeals.

By this last-mentioned Order it was provided, amongst other things—

"1. That from and after the 31st day of December next, no appeal to Her Majesty, her heirs and successors in Council, shall be allowed by any of Her Majesty's Supreme Courts of Judicature at Fort William in Bengal, Fort St. George, Bombay, or the Court of Judicature of Prince of Wales' Island, Singapore, and Malacca, or by any of the Courts of Sudder Dewanny Adawlut, or by any other Courts of Judicature in the territories under the Government of the East-India Company, unless the petition for that purpose be presented within six calendar months from the day of the date of the judgment,

decree, or decretal order complained of, and unless the value of the matter in dispute in such appeal shall amount to the sum of 10,000 Company's rupees at least; and that, from and after the said 31st day of December next, the limitation of £5000 sterling heretofore existing in respect of appeals from the Presidency of Fort William in Bengal, shall wholly cease and determine.

"2. That in all cases in which any of such Courts shall admit an appeal to Her Majesty, her heirs and successors in Council, it shall specially certify on the proceedings that the value of the matter in dispute in such appeal amounts to the sum of 10,000 Company's rupees or upwards, which certificate shall be deemed conclusive of the fact, and not be liable to be questioned on such appeal by any party to the suit appealed.

"3. Provided nevertheless, that nothing herein contained shall extend, or be construed to extend, to take away, diminish, or derogate from the undoubted power and authority of Her Majesty, her heirs and successors in Council, upon the petition at any time of any party aggrieved by any judgment, decree, or decretal order of any of the aforesaid Courts, to admit an appeal therefrom upon such other terms, and upon and subject to such other limitations, restrictions, and regulations, as Her Majesty, her heirs and successors, shall in any such special case think fit to prescribe."

In the month of July 1843 was passed the 6th and 7th Vict. c. 38, intituled "An Act to make further Regulations for the facilitating the hearing Appeals and other matters by the Judicial Committee of the Privy Council." This Act relates principally to appeals from the Ecclesiastical and Admiralty Courts; but it also enacted generally as regards appeals, that they might be heard by not less than three members of the Judicial Committee, and that they should be conducted with reference to manner and form, subject however to the Rules from time to time made by the Judicial Committee, as if appeals in the same causes had been made to the Queen in

Chancery, the High Court of Admiralty, or the Lords Commissioners of Appeals in Prize Causes.

The 7th and 8th Vict. c. 69, was passed in the year 1844, for the purpose of amending the 3d and 4th Will. IV. c. 41, and extending the jurisdiction and powers of the Judicial Committee. This Act made no alteration of note as regards Indian appeals.

Nothing was specially provided in these two last Acts for the regulation of Indian appeals, and all the earlier proceedings were taken according to the 3d and 4th Will. IV. c. 41, and the Order in Council of the 10th April 1838; but when the old appeals had been for the most part heard, it was determined to take the matter out of the hands of the East-India Company, and, in appeals from the Sudder Dewanny Adawluts, admitted by such Courts after the 1st January 1846, to leave the appellants in India to appoint Agents and Counsel in England to conduct their causes. For this purpose the 8th & 9th Vict. c. 30, was passed in 1845, and it is under this Act that appeals are now instituted, reserving of course with regard to their admission and the procedure, such portions of the previous Statutes and orders as are not repealed,[1] and relate generally or specifically to appeals from India.

I give this Act verbatim, as it is important and of no great length.

"An Act to amend an Act passed in the Third and Fourth Years of the Reign of His late Majesty King *William* the Fourth, intituled *An Act for the better Administration of Justice in His Majesty's Privy Council.*

[30th *June* 1845.]

"WHEREAS by an Act passed in the Session held in the third and fourth years of the reign of His late Majesty King *William* the Fourth, intituled *An Act for the better Administration of Justice in His Majesty's Privy Council,* after reciting that

[1] The 8th & 9th Vict. c. 30, specially repeals the 22d section of the 3d & 4th Will. IV. c. 41.

various appeals to His Majesty in Council from the Courts of Sudder Dewanny Adawlut at the several Presidencies of *Calcutta*, *Madras*, and *Bombay*, in the *East Indies*, had been admitted by the said Courts, and the transcripts of the proceedings in appeal had been from time to time transmitted under the seal of the said Courts through the *East-India* Company, then called the United Company of Merchants of *England* trading to the *East Indies*, to the Office of His Majesty's Privy Council, but that the suitors in the causes so appealed had not taken the necessary measures to bring the same to a hearing, it was enacted that it should be lawful for His Majesty in Council to give such directions to the said Company and other persons, for the purpose of bringing to a hearing before the Judicial Committee of the Privy Council the several cases appealed or thereafter to be appealed to His Majesty in Council, from the several Courts of Sudder Dewanny Adawlut in the *East Indies*, and for appointing Agents and Counsel for the different parties in such appeals, and to make such Orders for the security and payment of the costs thereof as His said Majesty in Council should think fit, and thereupon such appeals should be heard and reported on to His Majesty in Council, and should be by His Majesty in Council determined, in the same manner, and the Judgments, Orders, and Decrees of His Majesty in Council thereon should be of the same force and effect, as if the same had been brought to a hearing by the direction of the parties appealing, in the usual course of proceeding: provided always, that such last-mentioned powers should not extend to any appeals from the said Courts of Sudder Dewanny Adawlut, other than appeals in which no proceedings then had been or should thereafter be taken in *England* on either side for a period of two years subsequent to the admission of the appeal by such Court of Sudder Dewanny Adawlut: And whereas by certain Orders in Council made under certain powers contained in the said Act, provision is made for registering in the Council Office the arrival in this country of the transcripts of the proceedings in appeals

from the said Courts: And whereas it is considered advisable that the said Act should be amended in manner hereinafter mentioned: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the hereinbefore recited provisions of the said Act shall not apply to the case of an appeal which shall be admitted by any of the said Courts of Sudder Dewanny Adawlut after the first day of *January* one thousand eight hundred and forty-six.

"II. And be it enacted, that any appeal to be admitted by any of the said Courts of Sudder Dewanny Adawlut after the said first day of *January* one thousand eight hundred and forty-six shall be considered and be held to be abandoned and withdrawn by consent of the parties thereto, unless some proceedings shall be taken in England in the same by one or more of the parties thereto within two years after Registration at the Council Office of the arrival of the transcript; and any such appeal as aforesaid shall be held to be abandoned and withdrawn in like manner under any other circumstances which Her Majesty in Council may from time to time by any Orders or Rules in that behalf direct to be taken and considered as a withdrawal thereof; and the *East-India* Company are hereby required from time to time to ascertain and certify to the proper Courts in the East Indies all appeals which may from time to time become abandoned and dropped under the provisions of this clause."

Certain other Orders in Council have been since passed, but as they relate exclusively to rules of practice it is not necessary to notice them in this place.

CHAPTER V.

THE LAWS PECULIAR TO INDIA.

THE Laws which are peculiar to India are—

1. The Law enacted by the Regulations passed by the Governor-General and Governors in Council previously to the 3d and 4th Will. IV. c. 85, and the Acts of the Governor-General in Council passed subsequently to that Statute. This Law is the existing general law of all the British territories in India, excepting such portions as are subject to the jurisdiction of the Supreme Courts, and is administered in the Courts of the Honourable East-India Company, both to Natives and Europeans; British subjects being, however, excepted so far as relates to the criminal law. The Supreme Courts also take judicial notice of such of the Regulations as have been registered in such Courts, and alter the Common Law of England, together with such Acts of Government as alter the same Law, or are specially applicable to the same Courts, or to matters within their jurisdiction.[1]

2. The Native Laws. These may be divided into :—

(1.) The Hindú Civil Law so far as the same is reserved to the Hindú inhabitants of India, by the Statutes, Charters, and Regulations. This law is administered both in the Supreme Courts, and in those of the Honourable East-India Company.[2]

(2.) The Muhammadan Civil Law as reserved by the same Statutes, Charters, and Regulations, which is administered to Muhammadan inhabitants of India in both the Queen's Courts and the Sudder and Mofussil Courts;[3] and the Muhammadan

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[1] *The Queen* v. *Ogilvy*, 1 Fulton, 364. *Woodubchunder Mullick* v. *Braddon*, ib. 402.

[2] See *supra*, p. 120, note 2.

[3] See *supra*, p. 120, note 3.

Criminal Law, which is administered, under certain restrictions, in the Company's Courts of Criminal Judicature in the Presidencies of Bengal and Madras, but has been superseded by a written code in the Criminal Courts of the Bombay Presidency.

(3.) The Laws and Customs of those Natives of India who are neither Hindús nor Muhammadans. These laws and customs, so far as they can be ascertained, are administered in some civil matters in the Sudder and Mofussil Courts, in suits between such native parties, by a liberal construction of the wording of the Regulations.

1. The law enacted by the Regulations and Acts of the Governor-General in Council.

Sir James Mackintosh says, "There is but one way of forming a civil code, either consistent with common sense, or that has been ever practised in any country; namely, that of gradually building up the law, in proportion as the facts arise which it is to regulate."[1] This remark is especially applicable to British India, where it would at any time have been utterly impossible at once to have formed or adapted a code which would have been suited to its requirements.

From the date of the battle of Plassey in 1757, down to the subjugation of the Punjáb in our own times, new provinces and new nations have constantly and successively been brought under British rule, either by cession or conquest. They have been found to possess different laws and customs, and distinct and various rights of property; and they have consequently presented new facts requiring the introduction of fresh laws into our Codes for their government. These fresh laws were in many instances rendered inapplicable by the gradual introduction of civilization and the amelioration of the condition of the natives, and they were in such cases abolished accordingly;

[1] Discourse on the Study of the Law of Nature and Nations.

and this is one of the principal causes why the Codes of Regulation Law seem, at first sight, to be an incongruous and indigested mass.

The apparent defects of the Regulation Law will, however, in a great measure disappear on a closer examination; and, if we except some sweeping enactments of the earlier Indian legislators, who cut the Gordian knot instead of solving the riddle, the Regulations will be found to have been formed, modified, and abrogated, according to the peculiar circumstances of time and place, with an ability and moderation which reflects equal honour on the lawgivers themselves and the country which gave them birth.

The gradual "building up of the law" which has taken place in India, together with the variety of rights to be provided for, the diversity of the people to be governed, and of the laws to be administered, has unavoidably rendered the study of the Regulations both intricate and difficult; and on this account some hasty and thoughtless persons have been induced to pass an indiscriminate censure upon a system which they, possibly, wanted time or industry to acquire, or capacity to understand. It is nowhere pretended that the Codes enacted by the Governments of India are perfect; but the candid inquirer will pause and examine before he condemns them for obscurity or insufficiency, and will rather admire how, under such a complication of difficulties, a system of laws could have been formed providing so admirably for contingencies which apparently no human forethought could have anticipated, that has worked so well in practice, and that has resulted in the prosperity and good government so eminently conspicuous throughout the vast territories of our Indian Empire.

Many years ago that great statesman the Marquis of Wellesley spoke of the code of Bengal Regulations, upon which those of Madras and Bombay are based, in the following words:—"Subject to the common imperfection of every human institution, this system of laws is approved by practical experience, (the surest test of human legislation,) and

contains an active principle of continual revision, which affords the best security for progressive amendment. It is not the effusion of vain theory, issuing from speculative principles, and directed to visionary objects of impracticable perfection; but the solid work of plain, deliberate, practical benevolence; the legitimate offspring of genuine wisdom and pure virtue. The excellence of the general spirit of these laws is attested by the noblest proof of just, wise, and honest government; by the restoration of happiness, tranquillity, and security, to an oppressed and suffering people; and by the revival of agriculture, commerce, manufacture, and general opulence, in a declining and impoverished country."[1]

This is high praise. It is true that it was bestowed comparatively but a few years after the foundation of the Bengal Code by Lord Cornwallis; but an opinion from so great an authority must always command our respect; and it has been fully justified by a lengthened application of the test alluded to by the noble orator: practical experience has shewn us that the system was well conceived and well applied: through a long series of years it has been marked by progressive improvements; and British India exhibits at the present day, though on a grander scale, the same prosperous results that called forth Lord Wellesley's admiration nearly half a century ago.[2]

I shall now give a short statement of the Statutes under which the Regulation law generally was founded and formed.

Until the year 1793 no general Code of Regulations was enacted for the government of India, though long previously

[1] Discourse delivered by the Marquis of Wellesley on the 11th February 1805, at the annual meeting for the distribution of prizes to the students of the College at Fort William.

[2] This was written in 1850, but I see no reason to alter a single word. The recent mutiny, being entirely military, is wholly independent of our systems for the administration of justice; and the Kingdom of Oude has been so lately annexed that the perhaps more general rebellion in that province cannot be considered as in any way connected with our system of Laws.

to that time, and as early as 1772, when Warren Hastings was appointed Governor of Bengal, many rules and orders had been made by the Government of that Presidency.

The Regulating Act, the 13th Geo. III. c. 63, which was passed in 1773, first laid down specific laws for the Government of Indian affairs, and for the appointment of a Governor-General and Council. Sections 36 and 37 of that Statute empowered the said Governor-General and Council to make and issue such Rules, Ordinances, and Regulations, for the good order and civil government of the United Company's Settlement at Fort William in Bengal, and all places subordinate thereto, as should be deemed just and reasonable, and not repugnant to the laws of the realm; and to enforce them by reasonable fines and forfeitures: with a proviso, however, that such Regulations should not be valid unless registered in the Supreme Court of Judicature to be established under the said Statute.

An appeal lay from these Regulations to the King in Council; and even without an appeal His Majesty was empowered to set them aside by his sign manual.

By a subsequent Statute, the 21st Geo. III. c. 70, s. 23, passed in 1781, the Governor-General and Council were empowered to frame Regulations for the Provincial Courts and Councils, which were to be of force and authority to direct the said Provincial Courts, subject to revision by the executive Government of England.

Several Regulations were accordingly passed, under the authority of these Statutes, for the administration of justice and the collection of the revenue; the first receiving the sanction of the Bengal Government on the 17th of April 1780. Many of these, however, existed only in manuscript; and although others were printed, and some translated into the native languages, still these were chiefly on detached papers not easy of reference even to the officers of Government, and of course difficult to be obtained in a collected form; whilst such as were not translated into the languages of the country were quite inaccessible to the natives.

The three systems of Regulation law which are now current throughout India may be said to owe their origin to the political wisdom of the Marquis Cornwallis, during whose first government[1] was passed the celebrated Regulation XLI. of 1793,[2] entitled, "A Regulation for forming into a regular Code all Regulations that may be enacted for the Internal Government of the British Territories in Bengal." The preamble to this Regulation states, that "It is essential to the future prosperity of the British territories in Bengal, that all Regulations which may be passed by Government, affecting in any respect the rights, persons, or property of their subjects, should be formed into a regular Code, and printed, with translations in the country languages; that the grounds on which each Regulation may be enacted should be prefixed to it; and that the Courts of Justice should be bound to regulate their decisions by the rules and ordinances which those Regulations may contain. A Code of Regulations framed upon the above principles, will enable individuals to render themselves acquainted with the laws upon which the security of the many inestimable privileges and immunities granted to them by the British Government depends, and the mode of obtaining speedy redress against every infringement of them; the Courts of Justice will be able to apply the Regulations according to their intent and import; future administrations will have the means of judging how far Regulations have been productive of the desired effect, and, when necessary, to modify or alter them as from experience may be found advisable; new Regulations will not be made, nor those which may exist be repealed, without due deliberation; and the causes of

[1] The Members of the Bengal Council at this period deserve to be honourably recorded; these were Peter Speke, Esq., William Cowper, Esq., and Thomas Graham, Esq.

[2] Extended to Benares by Beng. Reg. I. 1795, s. 4, and re-enacted for the ceded and conquered provinces by Beng. Reg. I. 1803, and Beng. Reg. VIII. 1805, s. 2.

the future decline or prosperity of these provinces will always be traceable in the Code to their source."

The tenour, and for the most part the very terms of this important Regulation, were afterwards adopted into a Statute which was passed in 1797, confirming the power of making local laws already vested in the Governor-General in Council. This Statute, the 37th Geo. III. c. 142, by section 8 enacted that all Regulations which should be issued and framed by the Governor-General in Council at Fort William in Bengal, affecting the rights, persons, or property of the natives, or of any other individuals who might be amenable to the Provincial Courts of Justice, should be registered in the Judicial Department, and formed into a regular Code, and printed, with translations in the country languages; and that the grounds of each Regulation should be prefixed to it; and all the Provincial Courts of Judicature should be bound by, and regulate their decisions by, such rules and ordinances as should be contained in the said Regulations. The same section also enacted, that the said Governor-General in Council should annually transmit to the Court of Directors of the East-India Company ten copies of such Regulations as might be passed in each year, and the same number to the Board of Commissioners for the affairs of India.

The 18th and 19th sections of the 39th and 40th Geo. III. c. 79, passed in 1800, empowered the Governor-General and Council to order corporal punishment for breach of the Rules and Regulations made under the 13th Geo. III. c. 63; and the 20th section of the same Statute rendered the Province of Benares, and all provinces or districts thereafter to be annexed or made subject to the Bengal Presidency, subject to such Regulations as the Governor-General and Council of Fort William had framed or might thereafter frame.

At Madras, Regulations were made under the authority of the 39th and 40th Geo. III. c. 79, the 11th section empowering the Governor in Council at Fort St. George to frame Regulations for the Provincial Courts and Councils at that

Presidency; and Regulation I. of 1802, ordering the formation of a regular Code according to the plan adopted in Bengal, was framed upon the Bengal Regulation XLI. of 1793.

The right of the Bombay Government to make Regulations had been held to stand inferred from, and to be recognized by, the 11th section of the 37th Geo. III. c. 142;[1] but it was more formally conferred by the 47th Geo. III. sess. 2, c. 68, s. 3, passed in 1807. Under the inference above mentioned, and by the recommendation of the Governor-General and Council, Regulations were made at Bombay, commencing in the year 1799; Regulation I. of which year provided for the formation of a Code, and was taken with but little alteration from Regulation XLI. of the Bengal Code.

Section I. of the 47th Geo. III. sess. 2, c. 68, empowered the Governors in Council to make regulations for the good order and government of the towns of Madras, Bombay, and their dependencies.

The 53d Geo. III. c. 155, s. 66, enacted that copies of all Regulations made under the 37th Geo. III. c. 142; the 39th & 40th Geo. III. c. 79; and the 47th Geo. III. sess. 2, c. 68, should be laid annually before Parliament; and sections 98, 99, 100, empowered the Governor-General and Governors in Council, in their respective Presidencies, with the sanction of the Court of Directors and the Board of Controul, to impose duties and taxes within the towns of Calcutta, Madras, and Bombay; for the enforcing of which taxes Regulations were to be made by the Governor-General and Governors in Council in the same manner as other Regulations were made; and all such Regulations were directed to be taken notice of, without being specially pleaded, in His Majesty's Courts at Calcutta, Madras, and Bombay; and all persons were empowered to proceed in such Courts for the enforcement of such Regulations.

The powers given by the above Statutes are not very well

[1] Bomb. Reg. III. 1799; Bomb. Reg. II. 1808.

defined. To use the words of Sir Charles Grey, C. J.—"The exercise of one of them has been extensive beyond what seems to have been at first foreseen by the Legislature; and it is not that which in 1773 was designed to be the only one, which has in fact been the most considerable. That which was established by the 13th Geo. III. c. 63, has been almost a barren branch; and that which was given in 1781, expressly for the purpose of making limited rules of practice for Provincial Courts, has produced a new and extensive system of Laws, for a large portion of the human race."[1]

With regard to the translations of the Regulations into the country languages, the principle of which was actually opposed in sober seriousness by the notorious Francis, in his recommendation to *oblige* the natives of India to *learn English*,[2] it would be unnecessary to point out the wisdom or utility. Justinian himself published in Greek because it was the most generally understood language.[3] No reasonable person will refuse to admit the absolute necessity of such translations, previously to the enforcement of the laws which were framed for the government of the natives in the earlier stages of our administration, whatever may be the case at the present time.

According to the provisions above recapitulated, Regulations were successively enacted at the three Presidencies of Bengal, Madras, and Bombay, from the years 1780, 1802, and 1799 respectively.

These Regulations, where not repealed, are still in force, and form three separate codes; First that of Bengal, commencing

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[1] See Minute of Sir C. Grey, C. J., dated the 2d October 1829. Fifth App. to the Third Report from the Select Committee of the House of Commons, 1831, p. 1126, 4to. edit. And see Sir E. Ryan's Minute of the same date, ib. p. 1183.

[2] "Every man then would be able to speak for himself, and every complaint would be understood."—Letter to Lord North, p. 49. London, 1789.

[3] "Nostra constitutio quam pro omni natione *Græca* lingua composuimus."—Instit. lib. III. tit. viii. 3.

in 1793; Secondly, that of Madras, first formed in 1802, before which time no Regulations were passed in that Presidency; and Thirdly, the Bombay Code, which dates its origin, as it now stands, from the year 1827, when all the previous Regulations passed for the Bombay Presidency, from 1799 up to that period, were rescinded, and the present Code originated. Since the month of August in the year 1834, when Regulation II. of the Madras Code of that year received the sanction of the Governor-General in Council, no further Regulations were passed, their place being supplied by the Acts of the Governor-General in Council under the requirements of the 3d and 4th Will. IV. c. 85: these Acts apply to the whole of the British territories in India, unless otherwise specified. It must, however, be remembered that they do not supersede or abolish the old Codes of law, except in specified instances, and that they are expressly passed *in continuation* of the Regulations of the Supreme Government.

By the 39th section of the 3d and 4th Will. IV. c. 85, the superintendence, direction, and controul, of the whole civil and military Government of the British territories and revenues in India became vested in the Governor-General and Councillors, to be styled "the Governor-General of India in Council;" and by the next following section it was provided that the said Council should consist of four ordinary members, instead of three as formerly; and that of such four, three should be, or have been, servants of, or appointed by, the East-India Company; and that the fourth should be appointed, from amongst persons who should not be servants of the said Company, by the Court of Directors, subject to the approbation of His Majesty; and that such member should not sit or vote in the said Council, except at meetings thereof for making Laws and Regulations. The 43d section of the same Statute empowered the said Governor-General in Council to legislate for India, by repealing, amending, or altering, former or future Laws and Regulations, and by making Laws and Regulations "for all persons, whether British or Native, foreigners or others, and

for all Courts of Justice, whether established by His Majesty's Charters or otherwise, and the jurisdictions thereof, and for all places and things whatsoever, within and throughout the whole and every part of the British territories in India, and for all servants of the said Company within the dominions of Princes and States in alliance with the said Company." The next section enacted that such Laws and Regulations should be repealed, if disallowed by the Court of Directors at home. The 45th section provided, that until such Laws should be repealed by the home authorities, they should be operative; so that Laws for taxation no longer require the previous sanction of the Court of Directors. It was also declared by the last-mentioned section, that such Laws and Regulations should have the force of Acts of Parliament, and that their registration and publication in any Court of Justice should be unnecessary. By the 51st section it was enacted that nothing in the said Statute should affect the right of Parliament to legislate for India; and all Laws and Regulations made by the Legislative Council were required to be transmitted to England, and laid before both Houses of Parliament.

The restriction of the legislative power to a Council at the chief Presidency is undoubtedly a great improvement on the former plan, inasmuch as it secures uniformity in the system of legislation, and renders unnecessary the constant re-enactment of different Laws at the several Presidencies, when such Laws are applicable to the whole of British India. The principle which governs the present system is, however, essentially the same that has prevailed throughout the formation of the three Codes of Regulations.

A further alteration was made in the legislative system of India by the 53d section of the last-mentioned Statute; and as it is nearly connected with the Acts of the Governor-General in Council, it may properly be noticed in this place. This section enacted, that a Law Commission should be appointed by the Governor-General in Council to inquire into the jurisdiction, powers, and rules, of the existing Courts

of Justice and Police Establishments, and into the nature and operation of all Laws prevailing in any part of the British territories in India; and to make reports thereon, and suggest alterations, due regard being had to the distinction of casts, difference of religion, and the manners and opinions prevailing among different races and in different parts of the said territories.

In pursuance of the powers thus conferred an Indian Law Commission was appointed in the year 1834, consisting of the Legislative Councillor, another English barrister, and three Civil servants of the Company, one from each of the three Presidencies. Lord Macaulay, then Mr. Macaulay, was the first Legislative Councillor. After a lapse of about two years the Indian Law Commission published a proposed Penal Code for all India, known now as "Macaulay's Code," but it was *not* adopted; it was recast afterwards by Mr. Drinkwater Bethune, who subsequently held the office of Legislative Councillor, but this second edition was not more successful than the first, and "Macaulay's Code" has never received the sanction of the Government. After Mr. Macaulay's departure from India the Law Commission gradually died away, and though subsequently revived in the persons of the Members of Council; to use the words of Mr. Campbell, "No codification, consolidation, or general emendation and completion of the laws and customs of the country, nor any of the objects of the Law Commission whatsoever, has yet been effected."[1]

This language, though correct in the main, is perhaps a little too severe, for although the Law Commission, appointed as above stated, was a total failure so far as concerned its anticipated results, it has been productive of considerable benefit in another way. Up to a certain time the Commissioners published reports, upon which, in many instances, the Acts of the Governor-General in Council have been based. Their reports were printed periodically by order of the House

[1] "Modern India." By G. Campbell, Esq., 8vo. London, 1852, p. 187.

of Commons, and fill several large folio volumes; and although they contain a vast amount of matter which is speculative and unimportant, their perusal will amply repay the student for the trouble of wading through some thousands of pages, since they comprise numerous communications from the most learned and experienced persons in India in every department, embodying their opinions on many topics of the highest interest, which probably would otherwise never have been recorded. These Reports, of necessity, offer all the inconveniences attendant upon the textual reproduction of official correspondence; but the publication of comprehensive Indices, printed by order of the House of Commons in 1847, has obviated, in a great measure, the difficulty of reference.

In the year 1853, the 16th and 17th Vict. c. 95 was passed, and as yet its provisions are in force. Section 21 of this Statute repealed so much of the 3rd and 4th Will. IV. as provided that the fourth ordinary Member of Council should not be entitled to sit or vote in the said Council except at meetings thereof for making Laws and Regulations. By the following section six additional members were added to the Council; they are distinguished as Legislative Councillors thereof. Of these, four are to be appointed from the Civil servants of the Company of ten years' standing—two representing Bengal and the North-Western Provinces and appointed by the Lieutenant-Governors, and two representing Madras and Bombay, selected by those Governments. The two remaining members are the Chief Justice and one puisne Judge of the Supreme Court at Calcutta. Two other Legislative Councillors may be appointed by the Governor-General, being Civil servants of the Company of ten years' standing, but it does not appear that the power of making these additional appointments has as yet been exercised. None of these Legislative Councillors are entitled to sit or vote in the said Council except at meetings thereof for making Laws and Regulations: seven form a quorum. The assent of the Governor-General is necessary to the validity of Laws made by the said Council.

The Legislative Council now holds its sittings in public, and its debates are regularly reported and published.

Section 28 of the same Statute provided that Her Majesty might appoint Commissioners in England to consider and report upon the reforms proposed by the Indian Law Commissioners appointed under the 3rd and 4th Will. IV. c. 85. In pursuance of such powers a Commission was issued under the royal Sign Manual, dated November the 9th 1853, appointing eight Commissioners who have since presented four reports, the last of which is dated the 20th of May 1856. These reports recommended the amalgamation of the Queen's and Company's Courts, and proposed the most sweeping alterations in the whole judicial system. The Commissioners were, however, not unanimous, and one of them, the late Sir John Jervis, C. J., absolutely refused to sign the third and fourth reports, and after their presentation, formally, and it may be perhaps said, somewhat petulantly declined to take any further part in the proceedings of the Commission. The four reports of the Commissioners were sent out to India: the first on December the 12th 1855, the second on the 20th of February 1856, and the third and fourth on June the 25th 1856. They are now under the consideration of the Legislative Council at Calcutta.

In conclusion of the present division of this Chapter, I shall enumerate those works which tend to facilitate the study of the Law enacted by the Regulations and the Acts of the Governor-General in Council: the unrepealed Regulations of the three Presidencies remaining in force, as has been already mentioned, within the limits of the respective Presidencies, and forming, together with the Acts of the Governor-General in Council, and the unrepealed Statutes, the general subsisting Law throughout the British territories in India.

The Regulations themselves have been published at different times, and in various forms, both in India and in this country; those passed at each Presidency having been printed sepa-

rately, by order of the Governments in India or of the Honourable Court of Directors. From the year 1814, the Regulations of all the three Presidencies, passed in, and subquently to, that year, appeared concurrently, printed by order of the House of Commons. Various translations of the Regulations in the native languages were from time to time published by order of the Governments in India, but these it will be unnecessary in this place to mention more particularly.

In 1807 Sir James E. Colebrooke published a Digest of the Civil Regulations of the Presidency of Bengal from the years 1793 to 1806, in two folio volumes, together with a Supplement forming a third volume.

In 1807—1809 appeared the admirable analysis of the Bengal Regulations by Mr. John Herbert Harington, formerly Chief Judge of the Sudder Dewanny Adawlut at Calcutta; and in the year 1821 a second edition of the first volume, comprising the first and second parts of the work, and enriched with copious Notes and additions, was published in London under the patronage of the Court of Directors. It is scarcely possible to speak too highly of this analysis, and it justly occupies the very first place as an authority. The arrangement throughout the work is clear and simple, and the Notes which are added afford, in every instance, the greatest assistance to the student in the elucidation of the subject-matter of the text. In no instance, probably, has the patronage of the East-India Company been more worthily bestowed than upon Mr. Harington's work; and it is only to be regretted that the second and revised edition of the two latter volumes was never published. Imperfect though it be, however, and though it extends no later than the year 1821, no one who is desirous of obtaining a knowledge of the law of Bengal should omit to peruse it with the utmost attention. A Persian translation of Mr. Harington's analysis was made by Major Ouseley, and published at Calcutta in the year 1840:[1]

[1] كتاب ذخيرة العمل ترجمه ميجر جوسف اوزلي. 2 vols. 4to. Calcutta, 1840.

it is a most useful publication so far as it goes, as it affords to those natives who are ignorant of our language the means of gaining a perfect insight into the history and constitution of our system of legislation for India, and a knowledge of a large body of the Laws themselves.

An Abstract of the Regulations enacted for the Provinces of Bengal, Behar, and Orissa, in four 4to. volumes, originally compiled by Mr. Blunt, and continued by Mr. H. Shakespear, was printed at Calcutta in 1824—1828.

Mr. Dale's alphabetical Index to the Regulations of Government for the territories under the Presidency of Bengal was published, with an Appendix, in 1830: it is a useful work, but has been superseded by Mr. Fenwick's more recent publication of the same nature, mentioned below.

Mr. Richard Clarke is the author of a concise Abstract of the Bengal Regulations from 1793 to 1831, which forms the sixth Appendix to the Minutes of Evidence taken before the Judicial Sub-Committee of the House of Commons in the year 1832.

The same gentleman also published, in 1840, a collection of the Bengal Regulations respecting Zamíndárí and Lákhiráj property. This collection, which was printed by the authority of the Honourable Court of Directors, is of the highest interest, as it brings together, arranged under separate heads, such of the enactments of the Bengal Government as affect the possession and transfer of revenue property, or, as it is ordinarily termed in the Regulations which established the permanent settlement, property in land. Mr. Clarke published the present work chiefly for reference upon appeals to the Queen in Council, the right to Zamíndárí property forming the subject of many of the most important appeals from the Courts of the East-India Company, especially those from Bengal.

An Abstract of the Bengal Civil Regulations was published by Mr. Augustus Prinsep. I have never met with a copy of this work, but it is stated to be a very valuable and well-

executed compilation.[1] A Hindí translation of Mr. Prinsep's Abstract was published at Dehlí in 1843.[2]

In the year 1840 Mr. Marshman produced his Guide to the Civil Law of the Presidency of Fort William, which contains all the unrepealed Regulations, Acts, Constructions, and Circular Orders of Government relating to the subject. This is a most useful and comprehensive work, but it is to be regretted that it has not the advantage of an Index. A Hindí translation of this work, by the Professors of the Dehlí College, was published in 1843, comprising all the Regulations, abstracts of Constructions, and Circular Government Orders, contained in Mr. Marshman's work, and continued to November 1843; abstracts of some of the Acts of the Legislative Council, and of the Regulations relative to the resumption of rent-free tenures; together with an Epitome of the Hindú and Muhammadan Laws, from the works of Sir W. H. Macnaghten.[3] Mr. Marshman also published a Guide to the Revenue Regulations in the year 1835.

Mr. Fulwar Skipwith's Magistrates' Guide, which is an abridgement of the Criminal Regulations and Acts, and contains the Circular Orders and Constructions of the Court of Nizamut Adawlut in Bengal up to August 1843, is a most useful book in the criminal department.

In the year 1840 Mr. A. D. Campbell published at Madras a collection of the Regulations of the Madras Presidency from the year 1802, with a Synopsis and Notes on the Code, and mentioning all those Regulations that have been partially or wholly rescinded. This collection was republished in 1843, together with an enlarged Synopsis and a copious Index.

A work not unworthy of notice was published at Madras in

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[1] Shore on Indian affairs, Vol. I. p. 224.

[2] خلاصهٔ قوانين ديواني Abstract of the Civil Law, by A. Prinsep, Esq., continued from 1828 to March 1843, translated by Moonshee Hosseinee, 4to. Dehli, 1843.

[3] كليات قوانين ديواني Guide to the Civil Law of Bengal and the Upper Provinces, 4to. Dehli, 1843.

1843. It is entitled "The Civilian's Vade Mecum, or a Guide to the Knowledge of the Practice and Precedents of the Sudr and Foujdaree Udalut in the year 1835."

A digest of the Criminal Law of the Presidency of Fort William, by Mr. Beaufort, of the Bengal Civil Service, was published at Calcutta in the year 1846: it is spoken of in the highest terms by several writers, but I have not been able to discover any copy of it in this country.

In 1846 the Acts of the Supreme Government for 1834, 35, and 36, applicable to the Bengal Presidency, were edited in English and Urdú by the Rev. J. J. Moore, and published at Agra.

In the year 1848 Mr. Baynes, the Civil and Sessions Judge of Madura, published a treatise on the Criminal Law of the Madras Presidency, as contained in the existing Regulations and Acts. This work is preceded by a concise tabular statement of crimes and punishments; and contains, in addition, the Circular Orders of the Foujdary Adawlut from 1805 to February 1848.

An edition of the Acts passed from the 1st of January 1843 to the 30th of June 1848, with special reference to the Madras Presidency, was published at Madras in the latter year, by Mr. William Grant. This edition comprises some of the principal Acts of Parliament relating to India, and is illustrated with notes and other elucidatory matter. It is intended as a continuation of the Code edited by Mr. Campbell.

Mr. Richard Clarke, whose works on the Regulation Law have been already mentioned, has lately published an edition in 4to. of the Regulations for the three Presidencies, and the Acts of the Governor-General in Council relating to each Presidency, arranged separately. In this edition Mr. Clarke has omitted all enactments which are no longer in operation, "except in a very few instances, where a section or clause, though rescinded or superseded, has been referred to in a subsequent Regulation or where a provision in force during a certain period might occasionally require to be consulted in order to establish

the admissibility of evidence."[1] Mr. Clarke has added classified lists of Titles, and copious Indices. This edition of the Regulations, which is published by the authority of the Honourable Court of Directors, offers an uniform and compact collection of the whole body of the Laws enacted in India. The addition of the Indices, so generally wanting, or imperfect, in former editions, renders easy of access, in a commodious form, the contents of a number of bulky volumes, many of which are not easily to be procured. Mr. Clarke is entitled to the best thanks of the Indian community for his useful and important labours: the difficulties of the task, and the utility of the result, can only be appreciated by those whose duty or inclination has led them to study the Regulation Law of India.[2]

Mr. R. Clarke has also prepared a valuable Digest or consolidated arrangement of the Regulations and Acts of the Bengal Government from 1793 to 1854. This work was compiled by order, and for the use of, the Honourable Court of Directors of the East-India Company, and was not published.

In 1849 Mr. Fenwick published at Calcutta an Index to the Civil Law of the Presidency of Fort William, from 1793 to 1849 inclusive: it is formed on the plan of Dale's Index, already mentioned, which it may be said to have superseded. The second part of Mr. Fenwick's Index, containing the unrepealed Enactments of the Government of India, with reference to the Criminal Law, was published at Calcutta in 1851.

In 1849 an Edition in 8vo. of the Code of Bombay Regulations was published in London, by Mr. Harrison of the Bombay Civil Service: the Editor has added Notes shewing the alterations made by the enactments subsequent to 1827, together with a number of valuable interpretations, and an

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[1] See Clarke's Madras Regulations—Prefatory Note.

[2] The Code of Regulations and Acts of the Governor-General in Council, for the Madras Pesidency, was published in 1848: that for the Presidency of Bombay appeared in 1853: the Bengal Code, extends to the year 1853.

Epitome of the Acts of Government: he has also given a very full Index. The arrangement of Mr. Harrison's work renders it peculiarly convenient of reference. He has retained the original division of the Code into five branches, and has entered the Supplements to each Regulation immediately after it; so that the whole Bombay Law on any given subject, as it stood in the year 1849, is presented to the reader in a connected form.

The Acts of the Governor-General in Council were originally printed in India so soon as passed, and every publicity was given to them: they were also printed in England by order of the House of Commons.

Mr. Theobald has published at Calcutta a collection of the Acts of the Governor-General in Council, together with an Analytical Abstract prefixed to each Act, and copious Indices. The first part of this collection appeared in 1844, and the learned Editor has since continued his work, issuing an annual part containing the Acts of each year.

An Index to the Acts of the Governor-General in Council from 1834 to 1849, by Mr. Small, appeared at Calcutta in 1851.

The Acts and Orders for the North-Western Provinces for the year 1844 were published at Agra in 1846.

The most important work that has yet appeared respecting the actual working of the system for the administration of justice in India, by the Company's Courts, is Mr. Macpherson's treatise on the Procedure of the Civil Courts in Bengal.[1] The author has followed the method adopted by the writers of books of practice in this country, and has executed his task with great ability and judgment. The acumen with which he deduces principles from the decisions of the Courts, and the lucidity of arrangement throughout the work, are remarkable, whilst the mass of authorities quoted in the margin bear witness to his untiring industry and deep research. Mr. Macpherson is an

[1] The Procedure of the Civil Courts of the East-India Company in the Presidency of Fort William in regular suits. By William Macpherson, of the Inner Temple, Esq., Barrister-at-Law. 8vo. Calcutta, 1850.

English barrister; and his work proves, if proof were necessary, the advantage of bringing a legal education to bear on the analysis and illustration of the intricate law of India, and the policy of the enactment of 1846 (Act I.),[1] which, opening a new Forum to the honourable exertion of the Indian bar, must eventually be of mutual advantage both to that bar and to the Company's Courts.

A very useful compilation by Mr. Marshman, entitled the Dárógháh's Manual,[2] was published at Serampore in 1850. This work includes every Rule and Order which it is important for the Police-officers to know, in the Regulations and Acts, in the Circular Orders of the Superintendent of Police, and of the Nizamut Adawlut, and in the Constructions and Reports, scientifically arranged. To render the work more complete, all the rules which determine the Police responsibilities of the Zamíndárs, and of all persons connected with the landed interest, both in the Lower and in the North-Western Provinces, are fully given. It must be observed, however, that this work does not comprehend the duties of Magistrates and the Superintendent of Police, except in connexion with the Officers of Police and the Zamíndárs.

In the year 1852 Mr. Baynes published at Madras a good work on the Madras Civil Law as contained in the existing Regulations and Acts: it is accompanied by valuable Notes and Indices.

A Digest of the Civil Regulations in force in the lower Provinces, Bengal Presidency, alphabetically arranged entirely by the aid of that portion of Mr. Clarke's edition of the Bengal Regulations which refers to the Civil Courts, appeared at Calcutta in 1856. It is a useful work.

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[1] By this Act every Barrister of any of Her Majesty's Courts in India is entitled, as such, to plead in any of the Sudder Courts of the East-India Company, subject, however, to all the rules in force in the said Sudder Courts applicable to pleaders.

[2] The Darogah's Manual, comprising also the duties of Landholders in connexion with the Police. By J. C. Marshman. 8vo. Serampore, 1850.

In the same year a collection of the rules of practice of the Sudder Dewanny Adawlut at Calcutta from 1793 to the end of 1855 was compiled by Mr. J. Curran, and published "by authority" at Calcutta.

In the year 1856 a Treatise on the Civil procedure of the Courts of the East-India Company in the Presidency of Fort St. George in suits and appeals, was written by Mr. Samuel Dawes, a District Moonsiff of that Presidency, and published at Madras. This treatise is expressly formed on Mr. Macpherson's procedure of the Civil Courts in Bengal, already mentioned.

The only remaining work that I have been able to procure on the present branch of the Law of India is an edition of the Acts of Government relating to the Madras Presidency from 1848 to 1855, which was edited by Mr. W. P. Williams, and published at Madras in 1856.

2. Native Laws.

The earliest trace which we find of the reservation to the natives resident in our territories in India of their own laws and customs is in the Charter of George II., granted in 1753, in which there was introduced an express exception from the jurisdiction of the Mayors' Courts of all suits and actions between the Indian natives only, such suits and actions being directed to be determined among themselves, unless both parties should submit the same to the determination of the Mayors' Courts. This, however, was merely an *exception* to the jurisdiction; nor indeed does it appear that the native inhabitants of Bombay were ever actually exempted from the jurisdiction of the Mayors' Court, or that any peculiar Laws were administered to them in that Court.[1]

In Warren Hastings' celebrated plan for the administration of justice, proposed and adopted in 1772, when the East-India

[1] See Morley's Digest, Vol. II. p. 345.

Company first took upon themselves the entire management of their territories in India, the 23d Rule especially reserved their own laws to the natives, and provided that "Moulavies or Brahmins" should respectively attend the Courts, to expound the law, and assist in passing the decree.

Subsequently, when the Governor-General and Council were invested by Parliament with the power of making Regulations, the provisions and exact words of the 23d Rule above mentioned were introduced into the first Regulation enacted by the Bengal Government for the administration of justice. This Regulation was passed on the 17th of April 1780.

By section 27 of this Regulation it was enacted, "That in all suits regarding inheritance, marriage, and caste, and other religious usages or institutions, the laws of the Koran with respect to Mahomedans, and those of the Shaster with respect to Gentoos, shall be invariably adhered to." This section was re-enacted in the following year, in the revised Code, with the addition of the word "succession."[1]

In the Statute Law relating to India no such express privilege was granted until the year 1781; the 13th Geo. III. c. 63, passed in 1773, which established the Supreme Court at Fort William, and the Charter of Justice of that Court, containing no clause specially denoting the law to be administered to the natives.

In the former year, however, the declaratory Act of the 21st Geo. III. c. 70, which was passed for explaining and defining the powers and jurisdiction of the Supreme Court at Fort William in Bengal, expressly enacted, by section 17, that, in disputes between the native inhabitants of Calcutta, "their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined, in the case of Mahomedans by the laws and usages of Mahomedans, and in the case of Gentûs by the laws and usages of Gentûs; and where only one of the parties shall

[1] Beng. Jud. Reg. VI. 1781, s. 37.

be a Mahomedan or Gentû, by the laws and usages of the defendant." Section 18 of the same Statute emphatically preserved to the natives their laws and customs, enacting that, "in order that regard should be had to the civil and religious usages of the said natives, the rights and authorities of fathers of families and masters of families, according as the same might have been exercised by the Gentû or Mahomedan law, shall be preserved to them respectively within their said families; nor shall any acts done in consequence of the rule and law of caste, respecting the members of the said families only, be held and adjudged a crime, although the same may not be held justifiable by the laws of England." The next following section provided that the said Court might frame such process, and make such Rules and Orders for the execution thereof in suits Civil or Criminal against the natives of Bengal, Behar, and Orissa, as might accommodate the same to the religion and manners of such natives, so far as the same might consist with the due execution of the laws and the attainment of justice.

This reservation of the native laws to Hindûs and Muhammadans was extended to Madras and Bombay by sections 12 and 13 of the 37th Geo. III. c. 142, passed in 1797, under which Statute the Recorders' Courts at those Presidencies were established. Section 12 of this Statute re-enacted the 18th section of the 21st Geo. III. c. 70; and section 13 repeated *verbatim* the 17th section of the same Statute already quoted, with the addition, however, of "or by such laws and usages as the same would have been determined by if the suit had been brought and the action commenced in a native Court; and where one of the parties shall be a Mahomedan or Gentoo, by the laws and usages of the defendant: and in all suits so to be determined by the laws and usages of the natives, the said Courts shall make such rules and orders for the conduct of the same, and frame such process for the execution of their judgments, sentences, or decrees, as shall be most consonant to the religious and manners of the said natives, and to the said laws

and usages respectively, and the easy attainment of the ends of justice; and such means shall be adopted for compelling the appearance of witnesses, and taking their examination, as shall be consistent with the said laws and usages, so that the suits shall be conducted with as much ease, and at as little expense, as is consistent with the attainment of substantial justice."

By the 39th and 40th Geo. III. c. 79, s. 5, and the 4th Geo. IV. c. 71, s. 9, all powers and authorities granted to the said Recorders' Courts at Madras and Bombay were transferred to the Supreme Courts at those Presidencies to be established respectively under the said Statutes. The 22d section of the Charter of Justice of the Supreme Court at Madras, and the 29th section of the Charter of Justice of the Supreme Court at Bombay, contain the 13th section of the 37th Geo. III. c. 142, nearly word for word, and without any material addition or alteration.

Such is the Statute Law relating to this subject, and applying to the Supreme Courts of Judicature, and those natives within their jurisdiction. Of the Regulations passed for the direction of the Courts of the Honourable East-India Company, the first, as taking the lead in the enactment of this wise and just measure, has been already noticed. In 1793, section 15 of Regulation IV. of the Bengal Code enacted, that "in suits regarding succession, inheritance, marriage, and caste, and all religious usages and institutions, the Mahomedan laws with respect to Mahomedans, and the Hindoo laws with regard to Hindoos, are to be considered as the general rules by which the Judges are to form their decision." This section was extended to Benares and the Upper Provinces by section 3 of Regulation VIII. of 1795, and section 16 of Regulation III. of 1803 of the Bengal Code. The former of these last-mentioned Regulations by section 3, also enacted, in addition to the provisions of section 15 of Reg. IV. of 1793, that "in causes in which the plaintiff shall be of a different religious persuasion from the defendant, the decision is to be regulated

by the law of the religion of the latter; excepting where Europeans, or other persons, not being either Mahomedans or Hindoos, shall be defendants, in which case the law of the plaintiff is to be made the rule of decision in all plaints and actions of a civil nature."

In the year 1831 Moonsiffs generally throughout Bengal were directed to administer the Muhammadan laws with respect to Muhammadans, and the Hindú laws with regard to Hindús, in all cases of inheritance of, or succession to, landed property, and the law administered in such cases was to be the law of the defendant: where any doubts existed, they were enjoined to obtain an exposition of the law from the Law-officers of the Zillah Courts.[1]

In the year 1832 a Regulation was passed for the Bengal Presidency, entitled, "A Regulation for modifying certain of the provisions of Regulation V. 1831, and for providing supplementary rules to that enactment." This Regulation[2] attracted but little notice at the time, partly by reason of its title, and partly because it was principally devoted to the enactment of rules for appeals, pleadings, and the practice of the Courts: a most important innovation upon the rights of the natives was, however, unobservedly introduced. The 8th section of this Regulation rescinded the portion of section 3 of Regulation VIII. of 1795 above quoted, and enacted that the rules contained in section 15 of Regulation IV. of 1793, and section 16 of Regulation III. of 1803, should be "the rule of guidance in all suits regarding succession, inheritance, marriage, and cast, and all religious usages and institutions that may arise between persons professing the Hindoo and Mahomedan persuasions respectively." The 9th section proceeded to declare "that the above rules are intended, and shall be held to apply to such persons only as shall be *boná fide* professors of those religions at the time of the application of the

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[1] Beng. Reg. V. 1831, s. 6.

[2] Beng. Reg. VII. 1832.

Law to the case, and were designed for the protection of the rights of such persons, not for the deprivation of the rights of others. Whenever, therefore, in any civil suit, the parties to such suit may be of different persuasions, when one party shall be of the Hindoo and the other of the Mahomedan persuasion, or where one or more of the parties to such suit shall not be either of the Mahomedan or Hindoo persuasion, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. In all such cases the decision shall be governed by the principles of justice, equity, and good conscience; it being clearly understood, however, that this provision shall not be considered as justifying the introduction of the English or any foreign law, or the application to such cases of any rules not sanctioned by those principles."

This innovation was confined to the Bengal Presidency, and did not excite much attention until a later period, being, as it were, smuggled into an enactment relating to the technicalities of practice, and being, moreover, very obscure in its wording.

When Courts of Judicature were first established by the East-India Company in the Madras Presidency, in the year 1802, Regulation III. of the new Code was formed on the Bengal Reg. IV. of 1793, nearly the same words being used with regard to the reservation of the Hindú and Muhammadan laws as those employed in the latter Regulation.

In the Bombay Presidency, in the year 1799, the Governor and Council also passed a Regulation to the like effect, but more explicit and extensive in its application. This Regulation, the fourth of the above year, by its fourteenth section, secured to Hindú and Muhammadan defendants the benefit of their own laws in civil suits respecting "the succession to, and inheritance of, landed and other property, mortgages, loans, bonds, securities, hire, wages, marriage, and cast, and every other claim to personal or real right and property, so

far as shall depend upon the point of law." It also provided that, in the case of Portuguese and Pársí inhabitants, the Judge was to be guided by a view to equity in his decisions, making due allowance for their respective customs, so far as he could ascertain the same. Regulation II. of 1800 re-enacted the same provisions.

In 1827, when all the Judicial Regulations previously passed by the Bombay Government were rescinded, it was enacted that "the law to be observed in the trial of suits shall be Acts of Parliament and Regulations of Government applicable to the case; in the absence of such Acts and Regulations, the usage of the country in which the suit arose; if none such appears, the law of the defendant; and in the absence of specific law and usage, justice, equity, and good conscience alone."[1] Hindú and Muhammadan law officers were appointed to the Courts, and enjoined to return answers, conformable to their respective laws, to such questions as should be put to them by the Courts.[2]

Early in the year 1850, an Act was passed by the Government of India, extending the principle of section 9 of Reg. VII. of 1832 of the Bengal Code throughout the territories subject to the Government of the East-India Company. By this Act it was declared, that "So much of any law or usage now in force within the territories subject to the Government of the East-India Company as inflicts on any person forfeiture of rights or property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of any religion, or being deprived of cast, shall cease to be enforced as law in the Courts of the East-India Company, and in the Courts established by Royal Charter within the said territories."[3]

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[1] Bomb. Reg. IV. 1827, s. 26.

[2] Bomb. Reg. II. 1827, ss. 13. 29; Bomb. Reg. IV. 1827, s. 27.

[3] Act XXI. 1850.

In the year 1856 an Act was passed which contained the following important rules. It was enacted that no marriage between Hindús should be invalid, or the issue illegitimate, on account of any previous marriage to another since deceased. The widow's rights in her former husband's property were to cease (except where there was an express permission to re-marry) on a second marriage, as though she had died. On the re-marriage of a Hindú widow, if no guardian had been appointed by the will or testamentary disposition of the deceased husband for his children, the highest Civil Court having original jurisdiction in the place where the deceased husband was domiciled at the time of his death, was given the power of appointing a guardian to have the care and custody of the children during their minority, in the place of the mother. This appointment by the Court, was, however, dependent upon the petition of the father or paternal grandfather, or the mother or paternal grandmother, or any male relative of the deceased husband. No childless Hindú widow was made capable of inheriting to her deceased husband's property by this Act, if she were incapable of inheriting by the previous law. With these exceptions, no widow was, by her re-marriage, to forfeit any property or right to which she would otherwise have been entitled, and every widow re-marrying was declared to have the same rights of inheritance as though her re-marriage had been her first marriage. Whatever ceremonies were necessary to constitute a valid marriage of a Hindú female who had not been previously married, before the passing of this Act, were to have the same effect on the marriage of a Hindú widow. Should the widow be a minor, and her marriage not have been consummated, she was declared to be incompetent to re-marry without the consent of her father, failing him of her paternal grandfather, failing him of her mother, failing all these of her elder brother, and failing also brothers, of her next male relative. All persons knowingly abetting marriages made contrary to these provisions, were rendered liable to imprisonment or fine, or both, and such

marriages might be declared void by a Court of Law. In any question, however, as to the validity of such marriages, the consent of relatives, as aforesaid, was to be presumed until the contrary was proved, and no such marriage could be declared void after consummation. In the case of a widow of full age, or whose marriage had been consummated, her own consent was held to be sufficient.[1]

Thus far as regards the native Civil Laws. I now proceed to notice the Regulations respecting the reservation of the native Criminal Laws.

By Warren Hastings' plan in 1772, the Muhammadan Criminal Law was retained in the Criminal Courts subject to the interposition of Government, or of the subordinate English functionaries, where its provisions were manifestly unjust. In 1790, when the Governor-General accepted the Nizámut of Bengal, the Criminal Courts then established were directed to pronounce sentence according to the Muhammadan law; and in cases of murder according to the doctrines of Yúsuf and Muhammad,[2] as has been already noticed. The Muhammadan law was further ordered to be continued in the like manner in the Criminal Courts established in 1793.[3]

In 1832 it was enacted in Bengal that all persons, not professing the Muhammadan faith, might claim to be exempt from trial under the provisions of the Muhammadan Criminal Code for offences cognizable under the general Regulations.[4]

At Madras, in the year 1802, provisions were made respecting the administration of the Muhammadan Criminal Law in the Courts of the East-India Company, similar to those enacted in Bengal by Regulation IX. of 1793.[5]

The Criminal law administered in the Company's Courts at Bombay previously to 1827, was ordered to be regulated by the law of the accused party: Christians and Pársís to be

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[1] Act XV. 1856. [2] Beng. Reg. XXVI. 1790, ss. 32, 33.

[3] Beng. Reg. IX. 1793, ss. 47. 50. 74, 75.

[4] Beng. Reg. VI. 1832, s. 5.

[5] Mad. Reg. VII. 1802, ss. 15, 16; Mad. Reg. VIII. 1802, ss. 9, 10, 11.

judged on the principles of the English law, and Muhammadans and Hindús according to their own particular laws.[1] The Muhammadan law was to be regulated by the Fatwa of the law officers, which was directed to be given according to the doctrine of Yúsuf and Muhammad; respecting which, and the law of the Hindús, the Judges were enjoined to refer to the translation of the Hidáyah by Hamilton, and of the Hindú laws by Halhed and Sir William Jones; as likewise to a tract entitled "Observations," which then constituted part of the criminal Code for the province of Malabar and Salsette, &c.[2] In 1819 the Hindú Criminal Law was directed to be administered to Hindús in the special Court.[3] The Native Criminal Laws were abolished in the Bombay Presidency in 1827, and a regular Code substituted in their place.

The Muhammadan Criminal Law, even when first reserved to the natives of the British territories in India, was subjected to many important restrictions in its application; and it has been so modified by the subsequent Regulations in the Presidencies of Bengal and Madras, as to present no vestiges of its sanguinary character, and but few of its original imperfections.[4]

The above are the Laws and Regulations now in force. It

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[1] Bomb. Reg. V. 1799, s. 36; Bomb. Reg. III. 1800, s. 36; Bomb. Reg. VII. 1820, s. 17.

[2] Bomb. Reg. V. 1799, ss. 36. 39; Bomb. Reg. III. 1800, ss. 36. 39; Bomb. Reg. VII. 1820, ss. 17. 20.

[3] Bomb. Reg. X. 1819.

[4] The right existing in the Government to alter the Muhammadan law appears to have been virtually recognized by the 13th Geo. III. c. 63, s. 7, vesting in it authority for the ordering, managing, and governing, "in like manner (as the Act recites), to all intents and purposes whatever, *as the same now are, or at any time heretofore might have been, exercised* by the President and Council in Select Committee;" because it was *then* before the Legislature that the President and Council *had* interposed, and altered the Criminal Law of the Province in 1772. Such alterations, and all future necessary amendments thereof, appear, by the above clause, to be legally sanctioned. See Fifth Report from the Select Committee of the House of Commons, 1812, p. 40.

will be observed that, if we except the Bombay Regulations IV. of 1799, II. of 1800, and IV. of 1827, the reservation of the Native Civil laws, both in the Statutes and Charters, and by the Regulations, was confined to *Gentûs*,[1] or Hindús, and Muhammadans; a broad distinction of the natives of India into two classes, which most probably arose from the ignorance of our ancestors, and not from any intention of excluding other nations or sects from the benefit of their own laws. There are, however, as is well known, many other natives of India, who are neither Hindús nor Muhammadans. These form a large class, consisting of the Portuguese and Armenian Christians; the Párs'ís; the Sikhs; the Jains; the Burmese, and Avanese, who, together with the Chinese, many of whom have become naturalized in India, are Buddhists; and some few originally from Java and the Eastern Archipelago: to this class may be added the usual complement of that cosmopolitan parasite, the Jew. All these have their peculiar laws and usages, many of which are more or less connected with their religious creeds: they seem, however, to be excluded from the benefit of such laws in the Queen's Courts. In the Supreme Court at Calcutta a case appears to have been once decided according to the Sikh law,[2] but this was by reference to the Pandits; and thus, to use Sir Edward H. East's own words, he being Chief Justice at the time, "The difficulty was gotten over, by considering the Sikhs as a sect of Gentoos or Hindoos, of whom they were a dissenting branch."[3] At any

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[1] The late Sir Edward Hyde East, in his evidence before the Committee of the House of Lords in 1830, speaking of the term "Gentûs," used in the 21st Geo. III. c. 70, observes, "Whether that was intended to comprehend all other descriptions of Asiatics who happened to be located within the British bounds of India is perhaps very difficult to be told at this time of day."—Minutes of Evidence, p. 118. 4to. edit.

[2] *Doe dem. Kissenchunder Shaw* v. *Baidam Beebee.* Morley's Digest, Vol. II. p. 22.

[3] Appendix to Sir E. H. East's Evidence before the Select Committee of the House of Lords, 1830, p. 140. 4to. edit.

rate, it has been more than once held at Calcutta, that with the exception of Hindús and Muhammadans, no suitor of the Supreme Courts is entitled to have any special law applied to his case.[1] In an old case it was decided by the Supreme Court at Bombay,[2] that the Portuguese laws, in all points of succession, and of all personal rights, as those of husband and wife, remained in full force as regards the Portuguese in Bombay;[3] but it was also held in the same case that the law of Portugal could not, of its own force, operate at Bombay, and that the Portuguese were subject to the law of England alone, with the reservation of certain customs. Questions between Pársí litigants in the Supreme Court at Bombay appear to have been formerly adjudicated according to the provisions of the Hindú law, where there was no custom adduced to the contrary.[4] A recent case,[5] also decided in the Supreme Court at Bombay, has determined that the ecclesiastical jurisdiction of the Court extends to Párs'is, and that for such purpose they are included in the words "British subjects," contained in the clause of the Bombay Charter conferring such jurisdiction.

Questions of Hindú law, which come within the specification of the Statutes and Charters, are adjudicated in the Supreme Courts according to the doctrines of each particular school of law entertained by the parties, or according to any particular custom clearly proved to exist among such parties. With respect to Muhammadans, however, it is stated by Baillie, in the preface to his Treatise on Inheritance, that no other than the Sunní law has ever been administered in the

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[1] *Jebb* v. *Lefevre*, Cl. Ad. R. 1829, 56. *Musleah* v. *Musleah*, 1 Fulton, 420. Grant, J., however, dissented in this latter case, and thought that the Jewish law ought to be applied.

[2] *De Silveira* v. *Texeira*. Morley's Digest, Vol. II. p. 247.

[3] And see Sir Ralph Rice's evidence before the Select Committee of the House of Lords, 1830, p. 168. 4to. edit.

[4] Ibid. p 168.

[5] *Perozeboy* v. *Ardaseer Cursetjee*. Morley's Digest, Vol. II. p. 335.

Supreme Court at Bengal.[1] It may be true that no case may as yet have occurred in that Court, in which the parties held other than the Sunní doctrines; but there can be little doubt that, in the event of a case arising between Muhammadans not being Sunnís, the law administered would be according to the religious persuasion of the litigants. In a case recently decided in the Supreme Court at Bombay, where the parties held particular tenets scarcely compatible with the Muhammadan law, Sir E. Perry, C. J., in delivering judgment, remarked—"I am clearly therefore of opinion, that the effect of this clause in the Charter is, not to adopt the text of the Kurán as law, any further than it has been adopted in the laws and usages of the Muhammadans who came under our sway; and if any class of Muhammadans, Muhammadan dissenters as they may be called, are found to be in possession of any usage which is otherwise valid as a legal custom, and which does not conflict with any express law of the English Government, they are just as much entitled to the protection of this clause as the most orthodox Sunní who can come before the Court."[2] This language would of course apply equally to the Imámíyah doctrine; and indeed the learned Chief Justice seems inclined to a much more liberal interpretation of the law than has prevailed in the Supreme Court at Calcutta; for he goes on to say, "How far the peculiar laws of non-Christian aliens would be recognized, it may not be very easy, nor is it necessary, to define beforehand. On each occasion it would afford matter for judicial discussion and determination when the question arose. But on very many questions, such as marriage, divorce, succession, and, possibly, adoption, there seems no reason to doubt that the proper law to be referred to for the decision of any controversy, would not be the law of the Christian community, but the law

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[1] Baillie, Muhammadan Inheritance, Preface, p. vi.

[2] *Case of the Kojahs and Memon Cutchees.* Morley's Digest, Vol. II. p. 413.

and usage of the peculiar non-Christian class." And again, "The conclusion I draw is, that if a custom, otherwise valid, is found to prevail amongst a race of eastern origin, and non-Christian faith, a British Court of Justice will give effect to it, if it does not conflict with any express Act of the Legislature."[1]

In the Courts of the Honourable East-India Company an extended and liberal interpretation of the wording of the Regulations has always existed;[2] and we find, accordingly, numerous cases that have been decided according to the laws of the Portuguese, Armenians, Jains, and Pársís, so far as such laws could be ascertained, and the tenets of the Shí'ah sect of Muhammadans.[3]

In practice, as I have already mentioned, the Hindú usages and customs, and laws relating to gifts and contracts are recognized, and the Muhammadan Law has been applied to a variety of cases which may be arranged under the heads of Inheritance, Sale, Pre-emption, Gift, Wills, Marriage, Dower, Divorce, Parentage, Guardians and Minority, Slavery, Endowments, Debts and Securities, Claims and judicial matters.

It does not appear that any appeal has been presented to the Privy Council against any decision of the Courts below

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[1] Morley's Digest, Vol. II. pp. 446, 447.

[2] The Advocate-General recommended, in a case submitted to him by the Sudder Dewanny Adawlut of Bengal, in Feb. 1799, that foreign laws and customs not Hindú or Muhammadan should be ascertained by evidence. It may be observed, that the *intention* of the Regulations does not seem to have been to confine the reservation of the native laws to Hindús and Muhammadans. For instance, we find in the original rules regulating special appeals, that such appeals were to be allowed when the judgment should appear to be inconsistent with the Regulations, or with the Hindú and Muhammadan laws, in cases which were required to be decided by those laws, *or with any other law or usage which might be applicable to the case.*

[3] See the placita under the title GIFT, numbers 81, 82. HUSBAND AND WIFE, numbers 80 *et seq.*; INHERITANCE, numbers 323 *et seq.*; and PRACTICE, 234, *et seq.* Morley's Digest, Vol. I. pp. 272. 298. 349. 521.

founded on other native laws than those of the Hindús and Muhammadans. The Judicial Committee of the Privy Council, however, receive the Shí'ah law, and have so construed the Bengal Reg. IV. of 1793, in a case which was decided in 1841.[1] In another case, also, they decided, in general terms, that they were bound to take notice of the law of the country from which the appeal came, and to decide according to it, even although it had not been noticed in the Court below.[2]

Such is the present state of the Law, and the practice of the Courts, with respect to the admission of the native laws; and whatever may be the ultimate effect of the recent innovations, it cannot be denied that the preservation of such laws is in conformity with the doctrines of the ablest writers on jurisprudence, and is founded on "the wisdom of experience and the dictates of humanity."[3]

Warren Hastings, in pursuance of that enlightened and liberal policy which so eminently distinguished his government in India in all that regarded the conciliation and welfare of its native inhabitants,[4] was, as we have seen, the first to recommend and adopt the preservation of their laws. In furtherance of his plan for the administration of justice, he stated, in a letter addressed to the Court of Directors, in March 1773, "That in order to render more complete the Judicial Regulations, to preclude arbitrary and partial judg-

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[1] *Rajah Deedar Hossein* v. *Ranee Zuhoorroonisa.* 2 Moore Ind. App. 441.

[2] *Sumboochunder Chowdry* v. *Naraini Dibeh.* 3 Knapp 55.

[3] Strange's Elements of Hindu Law. Vol. I. Introd. p. x. 2d edit.

[4] "He was the first foreign ruler," says Lord Macaulay, "who succeeded in gaining the confidence of the hereditary priests of India, and who induced them to lay open to English scholars the secrets of the old Brahminical theology and jurisprudence." This, however, is but a tardy acknowledgment, introduced nearly at the end of an essay attacking on almost every point the public and private character of the great Governor-General.—See Macaulay's Essays, Vol. III. 5th edit.

ments, and to guide the decisions of the several Courts, a well digested Code of Laws, compiled agreeably to the laws and tenets of the Mahometans and Gentoos, and according to the established customs and usages, in cases of the revenue, would prove of the greatest public utility;"[1] and in a subsequent letter, with which he transmitted to England a specimen of a Hindú Code drawn up by his order, occurs the following remarkable passage:—"From the labours of a people, however intelligent, whose studies have been confined to the narrow circle of their own religion, and the decrees founded upon its superstitions, and whose discussions in the search of truth have wanted that lively aid which it can only derive from a free exertion of the understanding, and an opposition of opinions, a perfect system of jurisprudence is not to be expected. Yet if it shall be found to contain nothing hurtful to the authority of Government, or to the interests of society, and is consonant to the ideas, manners, and inclinations of the people for whose use it is intended, I presume that, on these grounds, it will be preferable to any which even a superior wisdom could substitute in its room."[2]

Nor must the opinion of Sir William Jones on this subject be omitted; an opinion, it is true, given some time after the measure which he recommends had been adopted by the Government, in accordance with the views of Hastings, but which loses none of its authority on that account, gaining, on the contrary, additional weight, as being not merely the theoretical idea of an able man, but the well-considered result of a five years' residence in India, devoted, with unprecedented success, to the intimate study of those very laws and institutions, the preservation of which he so warmly advocates.

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[1] Proceedings of the Governor and Council at Fort William respecting the administration of justice amongst the natives in Bengal, p. 33. 4to. 1774.

[2] Ib. p 35.

"Nothing," says Sir William Jones,[1] "could be more obviously just than to determine private contests according to those laws which the parties themselves had ever considered as the rules of their conduct and engagements in civil life; nor could any thing be wiser than, by a legislative act, to assure the Hindu and Muselman subjects of Great Britain that the private laws which they severally hold sacred, and a violation of which they would have thought the most grievous oppression, should not be superseded by a new system, of which they could have no knowledge, and which they must have considered as imposed on them by a spirit of rigour and intolerance."

Such, then, was the opinion of these great men; and although they wrote more than half a century ago, it is still entitled to our respect at the present day. The laws of the Hindús and Muhammadans are part and parcel of their religion, and believed by them to be of divine revelation; little or no change has taken place in the religious opinions of the natives since the days of Hastings and Jones; the Hindú still venerates the Institutes that have served to regulate the conduct of his forefathers for upwards of twenty centuries; and the Muhammadan looks with undiminished respect on the precepts transmitted to him in the Kurán by one whom he deems to be the last and the chief of the prophets of God.

A host of other writers, capable from long experience of forming a just estimate, might be quoted, upholding the same views: amongst them we find Verelst, Teignmouth, Strange, Harington, and William Macnaghten; whose names alone are sufficient in themselves to guarantee the value of their opinions on all questions connected with the welfare of the natives of India.

The Regulation VII. of 1832 of the Bengal Code, passed,

[1] Letter to the Governor-General and Council of Bengal, dated March 19, 1788.—Sir W. Jones's Works, Vol. III. p. 73*. 4to. Lond. 1799.

at the time, for reasons which I have already alluded to, without attracting any particular attention, although the object of the Regulation was, in effect, to abrogate so much of the Hindú law as provided that a convert to Muhammadanism or Christianity should forfeit all claim to his share of any heritable property: a most serious innovation upon the Hindú law, affecting the system in one of its most important branches, and interfering in a powerful degree with the most vital doctrines of the Hindú religion.

It was not until a more formal proposition was made in 1842, and again subsequently in 1845 when the *Lex loci* was taken into consideration, to alter the native laws as regards inheritance and exclusion from cast throughout, that any opposition was raised.[1] A Draft Act was prepared and submitted to the Government by the Indian Law Commissioners, in the former year, and again in 1845, containing a provision, that so much of the Hindú and Muhammadan law as inflicted forfeiture of rights or property upon any party renouncing, or excluded from, the communion of the Hindú or Muhammadan religion, should cease to be enforced as law in any of the Courts in India.[2] The Hindús presented memorials to the Governor-General, strongly expressive of their dissatisfaction at the proposed enactment, which they regarded as a violation of a solemn pledge, founded upon the Act of a superior and supreme legislature, confirmed by the local Government, and acted upon from the very period of British connexion with the Eastern Empire. They further intimated a fear that the security in person, property, and religion, hitherto ensured to them, thus undermined in one instance, might eventually be denied them altogether.[3] The proposed enactment was not sanctioned by the Government; but the recent Act XXI. of 1850, passed by

[1] Special Reports of the Indian Law Commissioners, 1843, p. 340 *et seq.* Ibid. 1847, p. 607 *et seq.*

[2] Ibid. p. 371; Ibid. 1847, pp. 630. 682.

[3] Ibid. 1847, p. 640 *et seq.*, and p. 649 *et seq.*

the Legislative Council of India, extending the provisions of the 8th and 9th sections of the Bengal Regulation VII. of 1832, is to nearly the same effect, and has again called forth the remonstrance and roused the jealous suspicions of the Hindús. Act XV. of 1856, legalising the re-marriage of Hindú widows, was a second positive and direct infringement of the Hindú law; it does not appear to have produced so much dissatisfaction amongst the Hindú community as was anticipated, but this and the Act last mentioned may be ranged amongst the numerous probable causes of the late rebellion.

The policy of the enactment of Act XXI. of 1850 is perhaps questionable: the beneficial results expected from its operation are at least doubtful. I allude, of course, to its anticipated effect in increasing the number of converts to Christianity. If it be true that the disinheritance, which, by the Hindú law follows apostacy, militates against conversion to the truth,—that is, in other words, that many Hindús would become Christians were it not for the prospect of the loss they would thereby sustain,—the question arises, in the first place, whether it be desirable to receive such lukewarm believers into our Church? As well might we offer bounty-money to recruit the ranks of Christianity from the multitudes who would be willing to make a traffic of their consciences. Again, it is not reasonable to suppose that any great accession will be made to the number of converted Hindús by the operation of this new Law. The converts from the Hindú creed to Muhammadanism have of late years been very numerous; indeed, it is to be feared, far more numerous than those who have rewarded the labours of our Missionaries by embracing the Christian religion; and this, be it observed, notwithstanding the Hindú law of forfeiture which has been denounced as holding so chief a place amongst the preventives of conversion. From this it may fairly be inferred that the comparative ill success of the Missionaries arises, not from the disabilities under which apostates and outcasts labour according to the Hindú law, but rather from the fact that the Muhammadan priest, however inferior in general education, has a much

greater knowledge of the people with whom he has to deal, and consequently a stronger hold upon their minds and imaginations, than that possessed by the Christian pastor. Such being the case, why do not our Missionaries try to attain the same legitimate power of convincing the heathen? Let them endeavour to obtain a more complete insight into the manners and customs of the natives, and a thorough knowledge of their languages; let them strive to convert by persuasion, instead of calling in the strong arm of the law to break down religious institutions which their ignorance has fruitlessly assailed; let them learn before they try to teach, and all will be well. Education is advancing with rapid strides, thanks to the effectual measures that have been adopted by the Government; and by its means, and not by the ill-judged violence of over zealous innovators, we may hope to see the dark superstitions of the natives gradually but triumphantly superseded by the light of Christianity. Then, and then only, will the time have arrived for extending to the mass of our Indian fellow-subjects the benefit of laws which they now can neither understand nor appreciate, and for effacing those institutions upon which their present social happiness so largely depends. The day has gone by when conversion was enforced by a mandate of the ruling power. The Act of 1850 has been termed an Act for the promotion of religious liberty; but surely such a name can scarcely be applied with propriety to a law which not only implies a violation of the rights of property, but, in the case of a Hindú, forbids him to hope for happiness in another world, whensoever his heir shall choose to forsake the faith of his forefathers.[1]

[1] It is hardly necessary to state that the Hindús believe the attainment after death of "bliss in other worlds, immortality and heaven," to depend upon the proper performance of obsequies by the next heir of the deceased, the inheritance and the performance of the obsequies being inseparable. These obsequies cannot be performed by an apostate, or by one excluded from cast, who, in either case, is considered to be virtually dead, the performance of the funeral rites, and the consequent inheritance, devolving upon the next in succession. By the law of the Kurán an infidel cannot succeed to the estate of a Muhammadan.

In considering the propriety of altering or abrogating the Hindú or Muhammadan laws, all pre-conceived notions of the relative excellence of the English and native systems of jurisprudence should be taken as secondary considerations; nor should it be called in question whether such systems are in themselves good or bad; for it should never be forgotten, that, in the present state of society in India, they are undoubtedly the best adapted to the wants and prejudices of the people who form the great bulk of the population of the country; that they are an integral part of the faith of that people; and that, though we may not be bound by absolute treaty, we have virtually pledged ourselves to preserve them by repeated proclamations and enactments.

The laws of the remaining class of natives, viz. those who are neither Hindús nor Muhammadans, are placed in a very different position. In some instances these laws are irrespective of religion; in almost all they depend more upon local customs than on written Codes; they never appear to have been admitted into the Queen's Courts; and whenever they have been administered in those of the East-India Company, with the exception of the Bombay Presidency, it has been done by a liberal extension by the Judges of the wording of the Regulations: added to this, the Government has never pledged itself in any way to preserve or administer such laws. The class itself, although collectively numerous, is composed of different sects and nations, which, taken separately, are of small extent and few in numbers, and mostly either foreign to the country, or but recently established there; and, finally, many of this class are anxious to be ranged under the protection of the British laws, instead of being subjected to the arbitrary rules of ill-ascertained usage.

The Armenians of Bengal, so long since as the year 1836, presented a petition to the Governor-General, in which, after setting forth the destitution of their legal condition, they add, "As Armenians have ceased to be a nation since the year of our Lord 1375, and no trace of their own law is now to be

discovered, your petitioners humbly submit that the Law of England is the only one that can, upon any sound principles, be permitted to prevail; and that it is moreover the law which was promised to Armenians at the time of their settlement in the country." This alleged promise is contained in an agreement between the Honourable East-India Company and Cogee Phanoos Calendar, an eminent Armenian merchant, which agreement is dated the 22d of June 1688.[1] It is unnecessary to discuss either the validity or the meaning of the agreement, as it is the desire only, and not the rights of the Armenian people, with which we are concerned in the present instance, and this desire is explicit.

The Pársís, who, if not the most numerous, are certainly the most wealthy and most influential of this class of natives on the Bombay side of India, are anxious to have a written law framed for their sect, though they do not exactly want the English law, for instance, in respect to their widows and daughters, in regard to their share of the inheritance on a man's dying intestate.[2]

It would seem, therefore, that, as relates to this class of natives, the enactment of a *Lex loci* would not only be justifiable, but productive of benefit; and it would doubtless put an end to much uncertainty and many of the difficulties which at present encompass the administration of justice in the Mofussil.

I shall now proceed to give a succinct account of the different native laws administered in our Courts in India; of the distinction between the various doctrines entertained by the native lawyers; in what districts, and amongst what sects, they prevail; and of the works in which such laws are written, and on which such doctrines are founded.

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[1] Special Reports of the Indian Law Commissioners 1842, p. 465.

[2] See the Minute of Sir George Anderson, dated 23d January 1843; and the Minute of Mr. Giberne, dated 27th January 1843. Ib. 1847, pp. 619. 621.

(1) Hindú Law.

(*a*) *Of the Sources of the Law.*

The civil and religious laws of the Hindús are believed by them to be of divine origin; one portion called Sruti, or "That which is heard," and which constitutes the Védas, being supposed to be in the very words revealed by Brahma himself; and another denominated Smriti, or "That which is remembered," comprising the Dharma Sástra, and imagined to have been communicated to mankind through the medium of inspired writers.

The Dharma Sástra comprehends not only Law in its usual sense, but rules for religious observances, and ancient and modern rituals. It is, however, generally understood as meaning exclusively Forensic Law and Civil duties, which are considered by the Hindú lawyers under the distinct heads of Private contests and Forensic practice; the former head comprehending Law, private and criminal, whilst the latter includes the forms of procedure, the rules of pleading, the law of evidence, adverse titles, oaths, and ordeal.[1]

Both the Sruti and the Smriti are interpreted by the same rules, which are collected in the Mímánsás, or disquisitions on proof and authority of precepts, and considered to be a branch of philosophy. The Mímánsás are described by Colebrooke as "properly the logic of the law."[2]

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[1] Colebrooke's Digest of Hindu Law, Vol. I. Pref. p. xii. 8vo. Lond. 1801.

[2] The two Mímánsás (for there are two schools of metaphysics under this title) are emphatically orthodox. The prior one (Púrva), which has Jaimini for its founder, teaches the art of reasoning, with the express view of aiding the interpretation of the Védas. The latter (Uttara), commonly called Védanta, and attributed to Vyása, deduces, from the text of the Indian scriptures, a refined psychology, which goes to a denial of a material world. —Colebrooke on the Philosophy of the Hindus. Essays, Vol. I. p. 227.; and see Transactions of the Royal Asiatic Society, Vol. I. p. 439.

(*b*) *On the various Schools of Hindú Law.*

In eastern India the Védas and the Mímánsás are less studied than in the south, and the lawyers of Bengal and Behar take the Nyáya,[1] or dialectic philosophy, for rules of reasoning and interpretation of the Law.[2] Hence arose the two principal schools, which deduced different inferences from the same maxims, and from which other schools again have diverged, each interpreting the Law according to the *dicta* of some favourite author.

Five Schools of Law may be said to exist at the present day; viz. the Gauriya (Bengal), Mithila (North Behar), Benáres, Maháráshtra (the Maratha country), and Drávida (the south of the peninsula).

It would be almost impossible to define with accuracy the limits of these several schools; nor, indeed, is there that great distinction between them which by most writers has been supposed to exist. The Bengal School, it is true, stands nearly alone, particularly with regard to the law of Inheritance, in which there is a wide difference in doctrine between the northern and the other schools, the latter receiving some treatises in common, which are totally rejected by the Gauriya lawyers. The Bengal school assimilates in some points with that of Mithila; inheritance, however, being still excepted.

Looking to the west and south of India, we find that the main distinction between the Benáres, Maháráshtra, and Drávida schools, is, in fact, rather a preference shewn by each respectively for some particular work as their authority of

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[1] The Nyáya, of which Gautama is the acknowledged author, furnishes a philosophical arrangement, with strict rules of reasoning, not unaptly compared to the Dialectics of the Aristotelian school. Colebrooke on the Philosophy of the Hindus. Essays, Vol. I. p. 227.

[2] Colebrooke, in Strange's Hindu Law, Vol. I. p. 316. Second edition.

Law, than any real or important difference of doctrine. It is very probable that this preference for particular treatises arose originally, not so much from their actual, or even fancied, superiority over other works, as from the ignorance of the lawyers, practically, of the existence of authorities not generally current in their respective provinces, and from the fact that such law-books were, in most cases, first promulgated in the very districts in which they are now pre-eminent.

In all the western and southern schools the prevailing authority is the nearly-universal Mitákshará; and although the Marathas may prefer the Mayúkha to the Mádhavíya, and the contrary may be the case in the Karnáta country, whilst in other districts other treatises are referred to, still the Law itself, even in regard to inheritance, is essentially the same throughout southern India.

However, as there does exist this distinction between the Bengal school and those of the west and south, and this preference with respect to the books referred to, it becomes advisable to give some idea of the extent and situation of the districts where the doctrines of the several schools are current.

The Gauriya, or Bengal school of Law, prevails over the whole province of Bengal Proper, and apparently is co-extensive with the Bengálí language, or, at least, is of authority wherever the Bengálí is spoken by the inhabitants of the country.

The Mithila school is that of north Behar, or Tirhút, the ancient kingdom of Mithila, which, though not often mentioned in history, is famous for having been the residence of Síta, Ráma's wife.

The doctrine of the school of Benáres is followed in the city and province of that name, and is the prevailing school of middle India. This doctrine is also current in Orissa, and extends from Midnapur to the mouth of the Hooghly, and thence to Cicacole.

The Maháráshtra is the school which governs the law in the

country of the Marathas. The south limit of the Maratha country may be loosely stated as passing from Goa through Kolapur and Bidr to Chandra; the eastern line follows the Warda river to the Injádri, or Satpúra hills, south of the Nerbudda, and which forms its northern limit, as far west as Nandód; and the western boundary may be marked by a line drawn from Nandód to Damán, and thence following the sea-coast as far as Goa: in other words, the Mahárashtra school prevails wherever the Marathi language is spoken by the natives.

The Drávida school is that of the whole of the southern portion of the peninsula; but it may be subdivided into three districts, in each of which some particular law treatises have more weight than others: these districts are, Drávida, properly so called, Karnátaka, and Andra. Drávida Proper is the country where the Tamil language is spoken, and occupies the extreme south of the peninsula: its boundaries may be traced by a line drawn from Pulicat to the ghâts between Pulicat and Bangalur, and then following the ghâts westward and along the boundary between Malabar and Kanara to the sea, including Malabar. The Karnátaka country is bounded on the west by the sea-coast as far as Goa, thence by the western ghâts up to Kolapur, to the north by a line drawn from Kolapur to Bidr, and on the east by a line from Bidr through Adóni, Anandpur, and Nandidrúg, to the ghâts between Pulicat and Bangalur: this is the country where the Karnátaka language is now spoken. The third district, the Andra, where the Telinga or Telugu is now the spoken language, extends from the boundary line last mentioned, and which, prolonged to Chandra, will form its western limit; on the north it is bounded indistinctly by a line running eastwards to Sohnpur on the Mahanaddí river; and on the east by a line drawn from Sohnpur to Cicacole, and thence to Pulicat, where the Tamil country begins. Mr. Ellis imagines that there are laws existing in the southern provinces which are of higher antiquity than those introduced from the north,

although not all derived from the same source:[1] this supposition is favoured by the fact, that Professor Wilson thinks it probable that the civilization of the south of India may date as far back as ten centuries before Christ.

These are the limits of the various schools of Law, so far as they can be approximatively defined. It must, however, be borne in mind, that though some works have especial weight respectively in the several schools, it seems that most of them, if known, would be respected in all, excepting Bengal; the broad division of doctrine being between the Law of Bengal and that of Benáres, to which latter all the remaining schools more or less assimilate.

I shall now consider the law-books of the Hindús generally; and then proceed to describe them *seriatim*, specifying such as are of chief authority, or more generally referred to by the lawyers in the respective schools and districts.

(*c*) *On the Hindú Law-Books.*

The Dharma Sástra may be conveniently divided into three classes—

I. The Smritis, or Text-books, which are the foundation of all Hindú law, and which are attributed to various ancient Rishis, or sages, who are supposed to have been inspired. These Smritis are all, with slight variation, in form and doctrine the same with the Institutes of Manu.

II. The Vyákhyána, or Glosses and Commentaries upon these Smritis, many of which partake of the nature of Digests.

III. The Nibandhana Grantha, or Digests properly so called, either of the whole body of the Law or of particular portions thereof, collected from the text-books and their commentators.

A fourth class of works may be added as an authority of

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[1] Ellis, on the Law-Books of the Hindus, in the Transactions of the Literary Society of Madras. Pt. I. p. 17.

Hindú law, viz. the works on the subject by European authors. These I shall mention separately.

I. The Smritis, Text-books, Institutes, or Collections (Sanhitá), attributed to various Rishis, are all divided into three Kándas, on sections; the first, Áchára, treating of religious ceremonies and daily observances; the second, Vyavahára, of law and the administration of justice; and the third, Práyaschitta, relating to penance and expiation.

The Smritis are enumerated differently by various writers: the Padma Purána gives the names of thirty-six Rishis; whilst Yájnavalkya, and Parásara mention only twenty. Yájnavalkya gives the following list:—Manu, Atri, Vishnu, Hárita, Yájnavalkya, Usanas, Angiras, Yama, Ápastamba, Samvarta, Kátyáyana, Vrihaspati, Parásara, Vyása, Sankha and Likhita (who were brothers, and wrote each a Smriti separately, and one jointly, the three being now considered as one work), Daksha, Gautama, Sátátapa, and Vasishtha. Parásara, whose name appears in the above list, enumerates also twenty select authors; but instead of Yama, Vrihaspati, and Vyása, he gives the names of Kasyapa, Gárgya, and Prachétas.[1] The Padma Purána, omitting the name of Atri in Yájnavalkya's list, completes the number of thirty-six above-mentioned by adding Maríchi, Pulastya, Prachétas, Bhrigu, Nárada, Kasyapa, Viswámitra, Devala, Rishyasringa, Gárgya, Baudháyana, Paithínasi, Jábáli, Sumantu, Paráskara, Lókákshi, and Kuthumi. Of these writers four have been respectively considered as the principal authorities in each of the four ages of the world; viz. Manu in the Krita Yuga; Gautama in the Treta Yuga; Sankha and Likhita in the Dwápara Yuga; and Parásara in the Kali Yuga, or present age. Several Smritis are sometimes ascribed to the same author: his greater or lesser Institutes (Vrihat or Laghu), or a later work of the author when old (Vriddha).[2]

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[1] Parásara, I. 13; 16.

[2] Colebrooke in Strange's Hindu Law, Vol. I. p. 316. 2d edit.

It appears from internal evidence to be probable that treatises attributed to these Rishis are extant, which, like the Puránas, all of which are said to have been written by Vyása, are by different authors; and indeed, as the reputed authors are mentioned in the texts in the third person, it is likely, as explained by the commentators, that the text-books were compiled by the pupils from the oral instructions of their master.

Whatever may be the authenticity or antiquity of these books, they are all venerated by the Hindús as next in sanctity to the Védas themselves, their authority being, moreover, confirmed by a text from the same holy writings, thus translated by Sir William Jones, according to the gloss of Sankara':—"God having created the four classes, had not yet completed his work: but in addition to it, lest the royal and military class should become insupportable through their power and ferocity, he produced the transcendent body of law; since law is the king of kings, far more powerful and rigid than they. Nothing can be mightier than law, by whose aid, as by that of the highest monarch, even the weak may prevail over the strong."

It must be observed that many Smritis are quoted or referred to by legal writers which are no longer extant; and it is even said to be the opinion of the Brahmans, that, with the exception of Manu, the entire work of no one of these sages has come down to the present time.[1]

The Mánava Dharma Sástra, or Institutes of Manu, the highest authority of memorial law,[2] is universally allowed by the Hindús not only to be the oldest work, but also the most holy after the Védas; and as, in addition to this, the other text-books are, as it were, formed on the same model, it may be fairly considered as the basis of the whole present system of Hindú jurisprudence. Besides the usual matters treated of in

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[1] Ward's View of the History, Literature, and Religion of the Hindoos. Vol. I. p. 447.

[2] Colebrooke's Digest of Hindu Law, Vol. I. p. 154, 2d edit.

a Code of Laws, the Mánava Dharma Sástra, which is divided into twelve books, comprehends a system of cosmogony, the doctrines of metaphysics, precepts regulating the conduct, rules for religious and ceremonial duties, pious observances, and expiation, the laws of purification and abstinence, moral maxims, regulations concerning things political, military, and commercial, the doctrine of rewards and punishments after death, and of the transmigration of souls, together with the means of attaining eternal beatitude.

The author of the Institutes is supposed to be Manu, surnamed Swáyambhuva, *i.e.* issuing from the self-existent, and who was the first of the seven Manus who governed the world. Brahma himself is related to have revealed them to his offspring; the Rishi Bhrigu subsequently promulgating the laws thus communicated by Divine revelation.

Disregarding the fabulous statements of the Hindús, the authorship and antiquity of the Mánava Dharma Sástra still remain surrounded with considerable obscurity. The arguments of Sir William Jones, who endeavoured to fix the date of the actual text at about the year 1280 before Christ, are almost as inconclusive as the traditions of the Brahmans; and the various epochs fixed by different authors seem to leave the question still undetermined. Chézy[1] and Deslongchamps, the latter of whom professes to have formed his opinion from an examination of the Code itself,[2] conceive that it was composed in the thirteenth century previous to our æra. Schlegel gives it as his decided and well-considered opinion, "quod multorum annorum meditatio me docuit," that the laws of Manu were promulgated in India at least as early as the seventh century before Alexander the Great, or about a thousand years before Christ:[3] he places the Rámáyana of Valmíki at about the same date, and doubts as to which is the older of the two. Elphin-

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[1] Journal des Savans, 1831.

[2] Deslongchamps, Lois de Manou, Préface p. v.

[3] Zeitschrift fur die Kunde des Morgenlandes. Bd. 3, p. 379.

stone, who is inclined to attribute great antiquity to the Institutes of Manu, on the ground of the difference between the law and manners therein recorded and those of modern times, and from the proportion of the changes which took place before the invasion of Alexander, infers that a considerable period had elapsed between the promulgation of the Code and the latter epoch; and he fixes the probable date of Manu, to use his own words, "very loosely, at some time about half way between Alexander (in the fourth century before Christ) and the Védas (in the fourteenth)."[1]

Professor Wilson, however, thinks that the work of Manu, as we now possess it, is not of so ancient a date as the Rámáyana, and that it was most probably composed about the end of the third or the commencement of the second century before Christ. This opinion of the highest living authority on the subject must be considered as decisive, so far as present materials can enable us to approximate the truth.[2]

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[1] Elphinstone, History of India, Vol. I. p. 437. 2d edition.

[2] Shortly after writing the above, I was favoured with the following very interesting communication on the sources of the Mánava Dharma Sástra from my friend Dr. Max Müller, the learned Editor of the Rig Véda:—

"*Park Place, Oxford, July* 29, 1849.

"My Dear Morley,—I have been looking again at the Law-literature, in order to write you a note on the sources of Manu. I have treated the subject fully in my introduction to the Veda, where I have given an outline of the different periods of Vaidik literature, and analyzed the peculiarities in the style and language of each class of Vaidik works. What I consider to be the sources of the Mánava-dharma-sástra, are the *Sútras*. These are works which presuppose the development of the prose literature of the *Bráhmanas* (like the Aitaréya-Bráhmana, Taittiríya-Bráhmana, &c.). These Bráhmanas, again, presuppose, not only the existence, but the collection and arrangement of the old hymns of the four Sanhitás. The Sútras are therefore later than both these classes of Vaidik works, but they must be considered as belonging to the Vaidik period of literature, not only on account of their intimate connection with Vaidik subjects, but also because they still exhibit the irregularities of the old Vaidik language. They form, indeed, the last branch of Vaidik literature; and it will perhaps be possible

Whatever may be the exact period at which the Mánava Dharma Sástra was composed or collected, it is undoubtedly

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to fix some of these works chronologically, as they are contemporary with the first spreading of Buddhism in India.

" Again, in the whole Vaidik literature there is no work written (like the Mánava-dharma-sástra) in the regular epic Sloka, and the continual employment of this metre is a characteristic mark of post-Vaidik writings.

" One of the principal classes of Sútras is known by the name of *Kalpa-sútras*, or rules on ceremonies. These are avowedly composed by human authors; while, according to Indian orthodox theology, both the hymns and Bráhmanas are to be considered as revelation. The Sútras generally bear the name of their authors, like Ásvaláyana, Kátyáyana, etc., or the name of the family to which the Sútras belonged. The great number of these writings is to be accounted for by the fact that there was not one body of Kalpa-sútras binding for all Brahmanic communities, but that different old families had each their own Kalpa-sútras. These works are still very frequent in our libraries, yet there is no doubt that many of them have been lost. Sútras are quoted which do not exist in Europe, and the loss of some is acknowledged by the Brahmans themselves. There are, however, lists of the old Brahmanic families which were in possession of their own redaction of Vaidik hymns (Sanhitás), of Bráhmanas and of Sútras. Some of these families followed the Rig-véda, some the Yajur-véda, the Sáma-véda and Átharva-véda; and thus the whole Vaidik literature becomes divided into four great classes of Bráhmanas and Sútras, belonging to one or the other of the four principal Védas.

" Now, one of the families following the Yajur-véda were the *Mánavas* (cf. Charanavyúha). There can be no doubt that this family, too, had its own Sútras. Quotations from Mánava sútras are to be met with in Commentaries on other Sútras; and I have found, not long ago, a MS. which contains the text of the Mánava-srauta-sútra, though in a very fragmentary state. But these Sútras, the Srauta-sútras, treat only of a certain branch of ceremonies connected with the great sacrifices. Complete Sútra works are divided into three parts; the first (Srauta) treating on the great sacrifices, the second (Grihya) treating on the Sanskáras, or the purificatory sacraments; the third (Sámayáchárika or Dharma-sútras) treating on temporal duties, customs, and punishments. The two last classes of Sútras seem to be lost in the Mánava-sútra. This loss is, however, not so great with regard to tracing the sources of the Mánava-dharma-sástra; because, whenever we have an opportunity of comparing Sútras belonging to different families, but following the same Véda, and treating on the same subjects, the differences appear to be very slight, and only refer to less important

of very great antiquity, and is eminently worthy of the attention of the scholar, whether on account of its classic beauty, and proving, as it does, that, even at the remote epoch of its composition, the Hindús had attained to a high degree of civilization; or whether we regard it as held to be a divine revelation, and consequently the chief guide of moral and religious duties, by nearly an hundred millions of human beings whom Providence has placed under our protection.

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niceties of the ceremonial. In the absence, therefore, of the Mánava-sámayáchárika-sútras, I have taken another collection of Sútras, equally belonging to the Yajur-véda, the Sútras of Ápastamba. In his family we have not only a Bráhmana, but also Ápastamba-Srauta, Grihya, and Sámayáchárika-sútras. Now it is, of course, the third class of Sútras on temporal duties which are most likely to contain the sources of the later metrical Codes of Law, written in the classical Sloka. On a comparison of different subjects, such as the duties of a Brahmachári, a Grihastha, laws of inheritance, duties of a king, forbidden food, etc., I find that the Sútras contain generally almost the same words which have been brought into verse by the compiler of the Mánava-dharma-sástra. I consider, therefore, the Sútras as the principal source of the metrical Smritis, such as the Mánava-dharma-sástra, Yájnavalkya-dharma-sástra, etc., though there are also many other verses in these works which may again be traced to different sources. They are paraphrases of verses of the Sanhitás, or of passages of the Bráhmanas, often retaining the same old words and archaic constructions which were in the original. This is, indeed, acknowledged by the author of the Mánava-dharma-sástra, when he says (B. II. v. 6), "The roots of the Law are the whole Véda (Sanhitás and Bráhmanas), the customs and traditions of those who knew the Véda (as laid down in the Sútras), the conduct of good men, and one's own satisfaction." The Mánava-dharma-sástra may thus be considered as the last redaction of the laws of the Mánavas. Quite different is the question as to the old Manu, from whom the family probably derived its origin, and who is said to have been the author of some very characteristic hymns in the Rig-véda-sanhitá. He certainly cannot be considered as the author of the Mánava-dharma-sástra, nor is there even any reason to suppose the author of this work to have had the same name. It is evident that the author of the metrical Code of Law speaks of the old Manu as of a person different from himself, when he says (B. X. v. 63), "Not to kill, not to lie, not to steal, to keep the body clean, and to restrain the senses; this was the short law which *Manu* proclaimed amongst the four casts."

"Believe me, yours very truly,

"M. MÜLLER.

The Code of Manu is divided into twelve books, and comprises in all 2685 Slokas or couplets.

Various editions of the text of Manu have been published, as also translations by Sir William Jones, Sir Graves Haughton, and an anonymous writer; and in French by M. Loiseleur Deslongchamps.[1] The version by Jones has been generally considered the masterpiece of that learned and elegant writer: those by Haughton and Deslongchamps vary from it but slightly, and nowhere importantly. All these three translations are according to the gloss of Kullúka Bhatta, which will be presently noticed when we come to treat of the Commentaries and Digests.

Atri, the second writer of a text-book according to Yájnavalkya, but who is not mentioned in the Padma Purána, composed a law treatise in verse, which is still extant. Vishnu is also said to have written an excellent treatise in verse, and Háríta one in prose: these have both come down to us in an abridged metrical form. Yájnavalkya, the grandson of Vis-

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[1] मनुसंहिता तट्टीकाच मन्वर्थमुक्तावलीनाम्नी श्रीकुल्लुकभट्टेन कृता ॥ 4to. Calcutta, 1813. मानवधर्म्मशास्त्रं ॥ Mánava Dharma Sástra, or the Institutes of Menu, in Sanscrit and English, translated by Sir W. Jones, and edited by G. C. Haughton, 2 vols. 4to. London, 1825. मानवं धर्म्मशास्त्रं ॥ Lois de Manou, publiées en Sanscrit, par Loiseleur Deslongchamps. 8vo. Paris, 1830. मनुसंहिता तट्टीकाच मन्वर्थमुक्तावलीनाम्नी श्रीकुल्लुकभट्टेन कृता ॥ Menu Sanhita: The Institutes of Menu, with the Commentary of Kullúka Bhatta, 2 Vols. 8vo. Calcutta, 1830. Institutes of Hindú Law, or the Ordinances of Menu, according to the gloss of Cullúca, verbally translated from the original Sanscrit (by Sir W. Jones). Folio. Calcutta, 1794.—Works, Vol. 3, p. 51, 4to. London, 1799. Mánava Dharma Sástra, Lois de Manou, traduites du Sanscrit par M. Loiseleur Deslongchamps. 8vo. Paris 1833. श्रीमता भवानीचरणवन्द्योपाध्यायेन शोधिता वेदशरधराधराशाकीयफाल्गुणस्य विंशतिवासरे कलिकातानगरे समाचारचंद्रिकायंत्रेण मुद्रितेयं मनुसंहिता ॥ Obl. Fol. Calcutta, 1833. Bengálí type. मनुसंहिता ॥ The Laws of Menu the son of Brahmâ. The first three books in Sanscrit, in the Dévanágari and Bengálí characters, with a literal translation into Bengálí, Sir William Jones's translation, and a revised English version. 4to. Calcutta. *Circa* 1833.

vámitra, appears, from the Introduction to his own Institutes, to have delivered his precepts to an audience of philosophers at Benáres.

The Yájnavalkya Dharma Sástra, or Institutes of Yájnavalkya, comprises three books, containing 1023 couplets. The age of this Code cannot be fixed with any certainty; but it is of considerable antiquity, as is proved by passages from it being found on inscriptions in every part of India, dated in the tenth and eleventh centuries. "To have been so widely diffused," says Professor Wilson, "and to have then attained a general character as an authority, a considerable time must have elapsed; and the work must date, therefore, long prior to those inscriptions."[1] In addition to this, passages from Yájnavalkya are found in the Pancha Tantra,[2] which will throw the date of the composition of his work at least as far back as the fifth century, and it is probable even that it may have originated at a much more remote period. It seems, however, that it is not earlier than the second century of our æra, since Professor Wilson supposes that the name of a certain money, Nanaka, which name is found in Yájnavalkya's Institutes, originated about that time.[3]

The Institutes of Yájnavalkya were published in the original at Calcutta.[4] An edition of the text, together with a German translation, has also appeared;[5] this edition, which we owe to Dr. Stenzler of Breslau, is enriched with marginal notes, pointing out the parallel passages in the Mánava Dharma Sástra, an addition which is extremely useful in comparing the doctrines of the two great lawgivers.

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[1] Journal of the Asiatic Society of Bengal, Vol. I. p. 84.

[2] Pantschatantrum, edidit Kosegarten, pars prima, pp. 80. 188. Fol. Bonn. 1848.

[3] Wilson, Ariana Antiqua, p. 364. 4to. Lond. 1841.

[4] याज्ञवल्क्यसंहिता श्रीभवानीचरणवंद्योपाध्यायेन मुद्रांकिता ॥ Oblong Fol. Calcutta. *Circa* 1840—45,

[5] याज्ञवल्क्यधर्मशास्त्रम ॥ Yâjnavalkya's Gesetzbuch, Sanskrit und Deutsch, herausgegeben von Dr. A. F. Stenzler. 8vo. Berlin, 1849.

The other Smritis now extant, according to Colebrooke,[1] are as follows:—The Institutes of Usanas, in verse, with an abridgement; a short treatise, containing about seventy couplets, by Angiras, who is supposed to have lived in the reign of the second Manu; a short tract of a hundred couplets by Yama, brother of the seventh Manu: a work in prose, by Ápastamba, and an abridgement of it in verse; a metrical abridgement of the Institutes of Samvarta; a clear and full treatise by Kátyáyana; an abridgement of the Institutes of Vrihaspati, if not the Code at large; a work by Parásara, who is the highest authority for the fourth age of the world; some works connected with law, by Vyása, the reputed author of the Puránas; the joint work of Sankha and Likhita, which has been abridged in verse, and their separate tracts, also in verse; a treatise in verse by Daksha; an elegant treatise in prose by Gautama; an abridgement in verse of a treatise on penance and expiation by Satátapa; and the elegant work in prose, mixed with verse, by Vasishta, the preceptor of the inferior gods, who is the last of the twenty legislators mentioned by Yájnavalkya. Besides these Smritis, Steele gives, in his list of Hindú law-books, an additional one, the Wamun Smriti, which he says was written by Wamun, a Brahman Rishi of Hindustán.[2]

An edition of the text of the Smritis, comprising those of Angiras, Atri, Ápastamba, Usanas, Kátyáyana, Daksha, Parásara, Yama, Yájnavalkya, Likhita, Vishnu, Vrihaspati, Vyása, Sankha, Samvarta, Háríta, Gautama, Sátátapa, and Vasishtha, has been published in Calcutta.[3]

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[1] Colebrooke's Digest of Hindu Law, Pref. p. xvi. *et seq.* 2nd edit.

[2] Steele's Summary of the Law and Custom of Hindoo Castes, p. 2.

[3] अङ्गिरःसंहिता ॥ अत्रिसंहिता ॥ आपस्तम्बसंहिता ॥ उशनःसंहिता ॥ कात्यायनसंहिता ॥ दक्षसंहिता ॥ पराशरसंहिता ॥ यमसंहिता ॥ याज्ञवल्क्यसंहिता ॥ लिखितसंहिता ॥ विष्णुसंहिता ॥ वृहस्पतिसंहिता ॥ व्याससंहिता ॥ शंखसंहिता ॥ संवर्त्तसंहिता ॥ हारीतसंहिता ॥ गौतमसंहिता ॥ शातातपसंहिता ॥ वसिष्ठसंहिता ॥ श्रीभवानीचरणबंद्योपाध्यायेनमुद्रिताः ॥ Oblong fol. Calcutta, 1845, *et ann. seq.*

Before concluding this short notice of the text-books, it must be remarked that the Smritis are, for the most part, of small extent, and relate almost exclusively to daily observances and religious ceremonies, touching upon law only incidentally; and that the Smritis themselves, which are received in common by all the schools, are no longer *final* authorities, even where they do treat of law. Vrihaspati says, "A decision must not be made by having recourse to the letter of written Codes; since, if no decision were made according to the reason of the Law (or immemorial usage), there might be a failure of justice."[1] The Mánava Dharma Sástra itself is, indeed, now regarded "as a work to be respected, rather than, in modern times, to be implicitly followed."[2] For *final* authority, then, in deciding questions of law, recourse must be had to the Commentaries and Digests.

II. The Commentaries, which form the second great authority of Hindú law, are tolerably numerous. Some are merely explanatory of the text, but others are regarded as final authorities; and these latter, together with the Digests, the third class of law-books, form the immediate groundwork for the opinions of lawyers in the respective schools where the doctrines they uphold may prevail. Many of the Commentaries on the Smritis,—such, for instance, as those on Manu's Institutes, which are merely explanatory of the text,—are not considered to be final authorities, any more than the Smritis themselves; but others again, which, by the introduction of quotations from other writers, and by interpreting and enlarging on the meaning of the author, partake so far of the nature of general Digests, are referred to for the final decision of questions. The Mitákshará is a remarkable instance of this; since, though professedly only a Commentary on the Smriti of Yájnavalkya, it is consulted as a final authority over the whole of India, with the exception of Bengal alone.

[1] Colebrooke's Digest of Hindu Law, Vol. II. p. 128. 2nd edit.

[2] Strange's Hindu Law, Vol. I. Pref. p. xiii. 2nd edit.

The Mánava Dharma Sástra has, as may be imagined, been the subject of several Commentaries; indeed, independently of its celebrity and its pre-eminence over all other legal works of the Hindús in antiquity and sanctity, its extreme conciseness has rendered it peculiarly attractive to the subtle-minded Hindú lawyers, and especially adapted to those ingenious refinements of reasoning, with which their works abound.

Amongst these Commentaries the most celebrated are, the one by Médhátithi, son of Víraswámi Bhatta, which, being partially lost, has been completed by other hands; the Comment by Govinda Raja; another by Dharanídhara; and the more famous gloss by Kullúka Bhatta, entitled the Manvartha Muktávali.

These Commentaries are all in considerable repute. Sir William Jones, however, characterizes the first as prolix and unequal; the second as concise but obscure; and the third as often erroneous; reserving for the Manvartha Muktávali that unqualified praise, in which he occasionally indulged when predilection somewhat warped his judgment. The period when Kullúka Bhatta flourished is not known; but he tells us himself that he was of a good family in Bengal, and that he resided on the banks of the Ganges at Benáres. It may be remarked that some ancient commentators speak of the Mánava Dharma Sástra as only adapted to the good ages, and not applicable to the time in which they wrote; a qualification nowhere expressed in the gloss of Kullúka Bhatta, and therefore arguing the superior antiquity of the latter: at the same time it is evident, from Kullúka's work itself, that opinions had already begun to change, and therefore that it must have been composed a considerable period subsequently to the promulgation of Manu's Institutes.

In addition to these Commentaries, M. Deslongchamps mentions, that, in preparing his edition of the Institutes, he made use of one by Rághavánanda, entitled Manvarta Chandriká, which he states to be in many instances more precise

and clear than the gloss of Kullúka.[1] Bhágurí is also said to have written a Commentary on the Mánava Dharma Sástra. Steele mentions two other glosses on Manu as known among the Marathas — the Mádhava, by Sáyanáchárya, which is stated to be of general authority, especially in the Carnatic; and the Nandarajkrit, by Nandarája: both of these works are spoken of as ancient; but as their authors are said to have been natives of Anagundi or Vijayanagar, the date of which is the middle of the fourteenth century, they cannot be very old.[2] Lastly, Colebrooke mentions a Commentary on Manu, which, however, he had never seen: it is called the Kámadhénu, and is cited by Srídharáchárya in his Smritisára.

All the above mentioned Commentaries are merely explanatory of the text, and must not be considered as final authorities.

An excellent Commentary on the Institutes of Vishnu, entitled the Vaijayanti, was written by Nanda Pandita.

The copious gloss of Aparárka, of the royal house of Selára, is supposed to be the most ancient Commentary on the Institutes of Yájnavalkya, and to be, therefore, earlier than the more celebrated Comment on the same text, the Mitákshará of Vijnánéswara, who is understood for the most part to refer to the work of Aparárka, when citing opinions without naming the source from which he derives them.[3]

The Mitákshará of Vijnánéswara, a celebrated ascetic, who is supposed to have resided in the north of India,[4] is a gloss on

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[1] Deslongchamps supposes the author to be the same as Raghunandana. मानवं धर्मशास्त्रं ॥ Avertissement, pp. xi. xvi.

[2] Steele's Summary of the Laws and Customs of Hindoo castes, pp. 1, 2. The former of the two works above mentioned is probably the Parásara Mádhavíya, which will be presently noticed; at any rate the Mádhava and Sáyana, spoken of by Steele, are the learned minister of Bukka Raya, king of Vijayanagar, and his brother the Commentator on the Védas.

[3] Ellis on the Law-books of the Hindus, p. 21.

[4] The Mitákshará is, however, sometimes claimed as a production of the south, and, at any rate, must have been brought there at a very early period. See Ellis, op. cit. p. 23.

the Yájnavalkya Dharma Sástra. It abounds, however, with apposite quotations from other legislators, and expositions of these quotations, as well as of the text it professes to illustrate: thus it combines the utility of a regular Digest with its original character; and it is referred to, and used for the same purposes as the professed Digests. Vijnánéswara, in his important work, follows the arrangement of the Yájnavalkya Dharma Sástra, and has divided his Comment into three parts: the first treats of duties, established rules, or ordinances; the second, of the laws and customs of the people, that is, of private contests and administrative law; and the third, of purification, the orders of devotion, penance, &c.[1]

The Mitákshará of Vijnánéswara is one of the greatest, and, indeed, if we take into consideration the extent of its influence, the greatest of all the Hindú law authorities; "for it is received," as Colebrooke observes, "in all the schools of Hindu law, from Benares to the southern extremity of the peninsula of India, as the chief groundwork of the doctrines which they follow, and as an authority from which they rarely dissent. The works of other eminent writers have, concurrently with the Mitácshará, considerable weight in the schools of law which have respectively adopted them; as the Smriti Chandricá in the south of India; the Chintámani, Retnácará, and Viváda Chandra in Mithilá; the Víramitródaya and Camalácara at Benares; and the Mayúcha among the Mahrattas. But all agree in generally deferring to the authority of the Mitácshará, in frequently appealing to its text, and in rarely, and at the same modestly, dissenting from its doctrines

[1] Mr. Borradaile has given a translation of the Index to the Mitákshará at the end of the first volume of his Bombay Reports (p. 445), but it comprises only the first and second books; the Index to the last book being designedly omitted, as being rarely consulted.—Borradaile's Reports of Causes adjudged by the Sudur Udalut of Bombay, Vol. I. Pref. p. v. Fol. Bomb. 1825.

on particular questions."[1] The Mitáksharà must thus be considered *as the main authority for all the schools of Law, with the sole exception of that of Bengal.*[2] The actual time when Vijnánéswara composed his great work is not precisely ascertained; but, according to Colebrooke, its antiquity exceeds five hundred, and falls short of a thousand years.

The Mitáksharà is, as has been already observed, a Comment on the text-book of Yájnavalkya; but it, in its turn, has been commented upon by various writers, and it will be most convenient to notice these Commentaries along with the work which they profess to illustrate. Colebrooke[3] mentions four Commentaries on the Mitáksharà, but describes only two; one entitled the Subódhiní by Visvésvara Bhatta, and another by a modern author, Bálam Bhatta. The Subódhiní is a collection of notes illustrating the obscure passages concisely but perspicuously: Bálam Bhatta's work is in the form of a perpetual comment, expounding the original word by word: he in general follows the Subódhiní so far as it extends. Nanda Pandita is mentioned by Sutherland as the author of a Commentary on the Mitáksharà, entitled Pratitákshara.[4]

Various editions of the original text of the Mitáksharà have been published.[5] A translation into Bengalí of the Second

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[1] Colebrooke's two Treatises on the Hindu Law of Inheritance, Pref. p. iv.

[2] Patábhi Ráma Shastri, from whom Mr. Ellis drew largely in compiling his excellent treatise on the law-books of the Hindús, admitted that the Mitáksharà of Vijnánéswara was the most generally prevailing authority, but stated, also, that in the Andra country the Smriti Chandrika and Sarasvati Vilása were chiefly esteemed; in the Dravida, the Sarasvati Vilása and Varadarájya; and in the Karnátaka, the Mádhavíya and Sarasvati Vilása. Ellis, on the Law-Books of the Hindus, p. 25.

[3] Colebrooke's two Treatises on the Hindu Law of Inheritance, Pref. p. ix.

[4] Sutherland's two Treatises on the Hindu Law of Adoption, Pref. p. ii.

[5] श्रीपद्मनाभभट्टोपाध्यायात्मजश्रीमत्परमहंसपरिव्राजकविज्ञानेश्वरभट्टारकस्य-कृतिः ऋजुमिताक्षरा याज्ञवल्क्यधर्मशास्त्रविवृत्तिः॥ Calcutta, 1812. विज्ञानेश्वराचार्यसंगृहीतः मिताक्षराव्यवहाराध्यायः The Mitáksharà: A Compen-

Book, appeared at Calcutta in the year 1824,[1] and a Hindí translation of the chapter on inheritance was published at the same place in 1832.[2] Its most important portion, viz. the sixth Chapter which treats of inheritance, has been translated by Colebrooke;[3] it is impossible to rate too highly the utility of this translation, the learned author having accompanied it by elucidatory annotations and glosses from his own pen, and drawn from those numerous sources to which his peculiar opportunities and immense erudition gave him a ready access; every page bears testimony to his diligence in collecting materials, to his judgment in their selection, and to his learning in their interpretation. M. Orianne has also translated the chapter on inheritance from the Mitáksharà.[4]

Sir William Hay Macnaghten, whose melancholy and violent death is fresh in the memory of all as being one of the earliest of the series of disastrous events that occurred during our first campaign in Afghánistán, devoted a large portion of his time to the successful cultivation of the native laws. Amongst other valuable works on this subject, he has left a translation of the Vyavahára Mátrika Prakrana, treating of the administration of justice, and including the Law of Evidence and Pleading: this forms the first portion of the second book of Vijnánésvara's work.[5]

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dium of Hindú Law; by Vijnánéswara founded on the text of Yájnavalkya. The Vyavahára section, or Jurisprudence, edited by Sri Lakshmi Náráyaná Nyayalancára. 8vo. Calcutta, 1829.

[1] मिताक्षरादर्पण The Mitákshará Derpana, translated from the Sungscrit into the Bengali Language, by Lukshmi Narayan Nyayalankar. 8vo. Calcutta, 1824.

[2] दायभाग: । The Law of Inheritance translated from the Sanscrit of the Mitákshará into Hindí, by Daya Sánkara. 8vo. Calcutta, 1832.

[3] Two Treatises on the Hindu Law of Inheritance, translated by H. T. Colebrooke. 4to. Calcutta, 1810.

[4] Traité original des successions d'après le Droit Hindou, extrait du Mitacshara de Vijnanéswara, par G. Orianne. 8vo. Paris, 1844.

[5] Detached portions of this translation first appeared in the Considerations on the Hindú Law, by Sir Francis Macnaghten, and the whole was

In addition to the Commentaries on the Yájnavalkya Dharma Sástra by Aparárka and Vijnánéswara above noticed, there are extant Comments by Dévabódha and Visvarúpa, and one by Súlapáni, entitled the Dípakaliká, a modern and succinct gloss, which is in deserved repute with the Gauriya school.[1]

The text-book in verse attributed to Yama, brother of the seventh Manu, has been illustrated by a Commentary from the pen of Kullúka Bhatta, the author of the celebrated gloss on the Mánava Dharma Sástra.

Nanda Pandita is the author of a Comment on the Parásara Smriti.

The Mádhavíya of Vidyáranyasvámi, named after Mádhava Áchárya, the brother of its author, is very generally received as an authority with the southern schools, but especially in the Karnátaka country. It is formed on the basis of the Parásara Smriti, on which it is professedly a Comment: but as in this Smriti the second book, which ought to comprise the legal Institutes, is wanting, Vidyáranyasvámi has been forced to select a verse of the general import that princes are enjoined to conform to the dictates of justice, upon which to raise his superstructure, explaining what that justice is. Thus in fact, though not in name, the Mádhavíya becomes a digest of the law prevalent in the southern portion of the peninsula. Vidyáranyasvámi was the virtual founder of the Vidyánagara empire, and his work became the standard of its law, as well as being of some authority in the Benáres school. It is ascertained that the author of the Mádhavíya wrote about the middle of the fourteenth century.

The text-book of Gautama was commented upon by Haradattáchárya, who resided in Drávida, and who is famous for

afterwards presented, in a complete state and connected form, in the Principles and Precedents of Hindú Law, by his talented son. both these works will be presently described.

[1] Colebrooke's Digest of Hindu Law. Vol. I. Pref. p. xvi. 2d edit.

his other compositions: his work, in which he occasionally quotes from other Smritis, is called Mitákshará, and must not be confounded with the treatise of Vijnánéswara.

The Varadarájya, by Varadarája, who also resided in the south of Indiia, and was a native of the Súbah of Arcot, is in fact a general Digest; but it may be placed among the Commentaries, since it is framed principally on the Nárada Smriti. It is a work of great authority in the southern schools, and especially in the Drávida country.

There is a general and concise Commentary and Abridgement of the Smritis which is entitled the Chatur Vinsati Smriti Vyákhya.

III. The Nibandhana Grantha, or Digests, properly so called, are the third chief authority of Hindú law. These Digests are either general or treat of particular and distinct portions of the Law, and consist of texts taken from the Smritis, with explanatory glosses, reconciling their apparent contradictions, in order to fulfil the precept of Manu—"When there are two sacred texts apparently inconsistent, both are held to be law, for both are pronounced by the wise to be valid and reconcileable."[1]

The following account of the Digests might perhaps have included the names of other treatises; but it has been my object, whilst endeavouring to make it as complete as possible, to exclude all those works which do not relate to Vyavahára, or jurisprudence: they have been arranged, where practicable, with relation to the schools of law in which they chiefly obtain; but it must be borne in mind that many of them, in common with several of the glosses and commentaries above mentioned, are of less authority than others, and that in many

[1] Manu, B. ii. v. 14. It should be remarked, however, that this applies only to 'sacred texts,' and proceeds from the impossibility of supposing either to be wrong. It does not apply to conflicting laws in general; on the contrary, any law incongruous with the Code of Manu is declared invalid.—Mill's History of India, by Wilson. Vol. I. p. 216, note.

cases their names even may not often be heard in an Indian Court of Justice.

The Dharma Ratna of Jímúta Váhana is a digest of the law according to the Gauriya school; the chapter on Inheritance, the celebrated Dáya Bhága, is extant, and is the standard authority of the law in Bengal. This treatise is on almost every disputed point opposed to the Mitáksharú; and it is, indeed, in this very branch of the law, viz. Inheritance, that we find the greatest difference in doctrine in the various schools. Jímúta Váhana probably lived and wrote between the age of Vijnánésvara and that of Raghunandana, the latter of whom is known to have flourished at the beginning of the sixteenth century. The Dáya Bhága is the more especially worthy of notice, on account of its being the work of the founder of the Gauriya school.

Three editions of the text of the Dáya Bhága, together with the Commentary of Srikrishna Tarkálankára have appeared at Calcutta, the first in the year 1813, the second in 1829,[1] and the third in 1844; this last edition I have not seen. A translation in Prakrit was published as Calcutta in 1816.[2]

The translation of Jímúta Váhana's chapter on Inheritance by Colebrooke, is the first of the two treatises on Inheritance published by that eminent scholar and lawyer, the Mitáksharú being the second. This version of the Dáya Bhága is annotated, commented upon, and illustrated with equal ability and learning.

The earliest Commentary upon the Dáya Bhága is that of

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[1] श्रीकृष्णतर्कालंकारकृतटीकासहितःश्रीजीमूतवाहनकृतो दायभागः॥ 4to. Calcutta, 1813. दायभागः॥ Dáya Bhága, or Law of Inheritance, by Jímúta Váhana, with a Commentary by Krishna Tarkálankára. 8vo. Calcutta, 1829.

[2] दायभागः। Dáyabhága, or Partition of Heritage, being a translation from the original Sanscrit in the Prakrit Bhasa. To which is added the Hindoo law, containing various useful information on affairs of general importance, together with the Munee Buchuns of the Sanscrit. 8vo. Calcutta, 1816. Bengálí type.

Srínátha Áchárya Chúdámani, which is characterised by Colebrooke as, in general, a very excellent exposition of the text.[1] The next in order of time is the gloss of Achyuta Chakravartí (author also of a Commentary of the Sraddha Vivéka): it cites frequently the gloss of Chúdámani, and is itself quoted by Mahésvara: this last is posterior in date to the Commentaries by Chúdámani and Achyuta, and probably anterior to that of Srikrishna Tarkálankára, which will be presently noticed, though the two seem to be nearly contemporary. The Commentary of Mahésvara differs greatly from the interpretation furnished by Srikrishna, both in meaning and in the manner of deducing the sense; but neither author seems to have been acquainted with the other's work.

The Commentary by Srikrishna Tarkálankára is the most celebrated of all the treatises explanatory of the text of the Dáya Bhága. Colebrooke says: "It is the work of a very acute logician, who interprets his author and reasons on his arguments with great accuracy and precision, and who always illustrates the text, generally confirms its positions, but not unfrequently modifies or amends them. Its authority has been long gaining ground in the schools of law throughout Bengal, and it has almost banished from them the other expositions of the Dáya Bhága, being ranked in general estimation next after the treatises of Jímúta Váhana and of Raghunandana."[2] This Commentary has been chiefly and preferably used by Colebrooke in his translation. Another gloss of the text is mentioned by Colebrooke as bearing the name of Raghunandana, but he does not consider it as genuine. Rámanátha Vidyá Váchaspati is also said to have written a Commentary on the Dáya Bhága.

Srikrishna Tarkálankára has written a good epitome of the Law of Inheritance entitled Dáya Krama Sangraha, which, though professedly an original work, agrees throughout with the learned writer's commentary on the Dáya Bhága.

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[1] Colebrooke's two Treatises on the Hindu Law of Inheritance. Pref. p vi.

[2] Ibid.

The text of the Dáya Krama Sangraha has been edited, with an English translation, by Mr. Wynch,[1] and was also published separately at Calcutta in the year 1828.[2]

The Smriti Tatwa of Raghunandana Vandyaghatíya, the greatest authority of law in the Gauriya school, is a complete Digest, in twenty-seven volumes, and is described by Goverdhen Kál as "the grandest repository of all that can be known on a subject so curious in itself, and so interesting to the British Government."[3] This great writer, who, as I have already mentioned, lived in the beginning of the sixteenth century, was a pupil of Vásudéva Sárvabhauma: he is often cited by the name of Smártabhattáchárya.

The Dáya Tatwa, or that portion of the Smriti Tatwa of Raghunandana which relates to Inheritance, is highly spoken of by Colebrooke, who says: "It is indeed an excellent compendium of the law, in which Jímúta Váhana's doctrines are in general strictly followed, but are commonly delivered in his own words, in brief extracts from his text. On a few points, however, Raghunandana has differed from his master, and in some instances he has supplied deficiencies."[4]

Káshiráma has written a Commentary on the Dáya Tatwa of Raghunandana which is useful, and nearly agrees with the views taken by Srikrishna in his interpretation of the work of Jímútá Váhana.

The whole work of Raghunandana was published in the original at Serampore in the years 1834—35, and again at

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[1] The Dáya Crama Sangraha, an original Treatise on the Hindoo Law of Inheritance, translated by P. M. Wynch. Fol. Calcutta, 1818. This edition is accompanied by the Sanscrit text printed in Bengálí type.—

[2] श्रीकृष्णतर्कालंकारभट्टाचार्यविरचितो दायाधिकारक्रमसंग्रहः Dáya Krama Sangraha, a Compendium of the Order of Inheritance, by Krishna Tarkálankára Bhattác'árya; edited by Lakshmi Náráyan Serma. 8vo. Calcutta, 1828.

[3] Asiatic Researches, Vol. I. p. 352. 5th edit.

[4] Colebrooke's two Treatises on the Hindu Law of Inheritance, Pref. p. vii.

Calcutta about the year 1840.[1] The text of the Dáya Tatwa was also published at Calcutta in the year 1828;[2] and the text of the Vyavahára Tatwa of the same author appeared at the same place in the same year.[3]

The Dáya Rahasya or Smriti Ratnávalí, by Rámanátha Vidya, is of considerable authority in some districts of Bengal; but though a work of merit, it differs both from Jímúta Váhana and Raghunandana, and thus tends to create uncertainty.

The Dvaita Nirnaya of Váchaspati Bhattáchárya, a treatise on general law, and the Dáyá Nirnaya of the same author, which treats of inheritance, the latter being little more than an abridgment of the Dáya Bhága and Dáya Tatwa, are also Bengal authorities.

Késava Misra, a native of Mithila, is the author of the Chhandóga Parisishta and the Dvaita Parisishta: the former, together with its commentary, the Parisishta Prakása, are works of great authority, and treat of the duties of priests: the latter is a more general treatise.

The Viváda Ratnákara, a general digest compiled under the superintendence of Chandéswara, Minister of Harasinhadéva, King of Mithila, and who was himself the author of other law tracts; the Viváda Chintámani, the text of which was published at Calcutta in the year 1837;[4] the Vyavahára

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[1] श्रीरघुनंदनविरचितानि अष्टाविंशति तत्वानि ॥ 2 Vols. 8vo. Serampore, 1834.

महामहोपाध्याय वघघटीयस्मार्त्तश्रीरघुनंदनभट्टाचार्यकृतानि तत्वानि अभिवाती चरणवंद्योपाध्यायेन कलिकातनागरे मुद्रांकितानि ॥ Obl. Fol. Calcutta, *Circa* 1840—45.

[2] दायतत्त्वं Dáya Tatwa, a Treatise on the Law of Inheritance, by Raghunandana Bhattáchárya, edited by Lakshmi Naráyan Sermá. 8vo. Calcutta, 1828.

[3] वयवहारतत्त्वं Vyavahára Tatwa, a Treatise on Judicial Proceedings, by Raghunandana Bhattáchárya. Edited by Lakshmi Náráyan Serma. 8vo. Calcutta, 1828.

[4] विवादचिंतामणिः श्रीवाचस्पतिमिसविरचितमवः ॥ 8vo. Calcutta, 1837.

Chintámani; and the other works of Vachespati Misra, commonly cited by the name of Misra, are all considered as great authorities in Mithila; as are likewise the Viváda Chandra, and other treatises by the learned lady Lachimádéví, who wrote under the name of her nephew, Misaru Misra. Sri Karáchárya, and his son Srínáthácharya, were also celebrated in the Mithila school of law; the former, as the author of a treatise on inheritance; the latter, of the Áchárya Chandriká, a tract on the duties of the fourth class.

The Smritisára, or Smrityarthasára, by Sridharáchárya, a treatise on religious duties, but mentioning civil matters incidentally, is according to the Mithila school: it quotes the Pradipa, Kalpadruma, and Kalpalatá, works otherwise unknown. There seems to be several Smritisáras. Sir W. Macnaghten mentions one by Harináthopadhyáya, which is of authority in Mithila;[1] and there is another by Yadavendra. The Smriti Samuchchaya, or Smriti Sára Samuchchaya, is also a Mithila authority, and is known amongst the Marathas: it is apparently a short work.

The Madana Párijáta, a treatise on civil and religious duties, by Visvésvara Bhatta, but containing a chapter on Inheritance, is likewise a Mithila work, and prevails also in the Maratha country: it quotes the Sáparárka, the Smriti Chandriká, and the Hémádri. This work was composed by order of Madana Pála, a prince of the Játh race, and is sometimes cited in his name. Sir W. Macnaghten calls the author Madanopadhyáya.

Súlapáni, a native of Mithila, who wrote a commentary on the Mitákshará, already noticed, is also the author of a treatise on penance and expiation, which is consulted as an authority both in Bengal and Mithila.

The Víramitrodaya of Mitra Misra is a treatise on Vyavahára in general according to the doctrines of the Benáres

[1] Principles and Precedents of Hindu Law, Vol. I. Pref. p. xxii.

school, and systematically examines and refutes the opinions laid down by Jímúta Váhana and Raghunandana.[1]

The Sanskrit text of the Víramitrodaya was printed at Calcutta in 1815.[2]

The Viváda Tándava of Kamalákara, younger brother of Dinakara Bhatta, and son of Ramakrishna Bhatta, is on the same side of the argument, and defends the doctrines of Vijnánésvara in opposition to the writers of the Gauriya school.

The Nirnaya Sindhu is a modern work, but of considerable authority at Benáres, as well as amongst the Marathas: it treats principally of rites and ceremonies, touching incidentally only on questions of a legal nature. The author is Kamalákara.

The original text of the Nirnaya Sindhu was published at Calcutta in the year 1833.[3]

Neither Mitra Misra nor Kamalákara differ from the Mitákshará on any important point.

The Vyavahára Mayúkha of Nílakantha is the greatest authority, after the Mitákshará, in the Maháráshtra school, and is one of the twelve treatises by the same author, all bearing the same title of Mayúkha, and treating of religious duties, rules of conduct, penance, expiation, &c. The whole of the Mayúkhas are designated collectively the Bhagavat Bháskara. The Vyavahára Mayúkha, which is the sixth in the list, is devoted exclusively to law and justice, and is a general digest, or collection of texts, without much commentary, especially in

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[1] Steele mentions another work bearing nearly the same title, but so disfigured by his barbarous orthography as to be uncertain. He calls it *Wyuwhar Mitrode*, and says it was composed by a Gaura Brahman of Bengal, 200 years since, and that it is of general notoriety. Summary of the Law and Custom of Hindoo Castes, p. 14.

[2] वीरमित्रोदयाख्यधर्मशास्त्रं ॥ 4to. Calcutta, 1815.

[3] श्रीकमलाकरभट्टविरचितं निर्णयसिंधुनामकं धर्मशास्त्रं ॥ 4to. Calcutta, 1833.

the latter chapters. Little or nothing is known of the author, Nílakantha, beyond that he was of a family of Deshast Brahmans, and it is generally reported that his work was composed about a hundred and fifty years since.

An edition of the text of the Vyavahára Mayúkha was published at Bombay in the year 1826, by order of the Government.[1]

Mr. Borradaile, late of the Bombay Civil Service, and a Judge of the Sudder Dewanny Adawlut, the author of the valuable Bombay Reports, has published a translation of the Vyavahára Mayúkha, to which he has affixed annotations referring to passages of other works on Hindú law, and rendering his version of peculiar utility to the student of the law of the Bombay side of India.[2]

The Smriti Kustubha, by Ananda Déva Kasikar, a Kokunust Chitpawani Brahman, was compiled by desire of Baj Bahádur, otherwise called Chandra Déva. It is one of twelve works bearing the title of Kustubha, all of which are to be met with at Benáres: it is known at Poonah, and treats of Áchára, Vyavahára, and Práyáschitta.

The Hémádri, by Hémádri Bhatta Kasikar, is a general Digest of some antiquity, containing twelve divisions, and is of authority on the Bombay side of India.

The following works are mentioned by Steele as of authority in the Maratha country.

The Dyot, by Gaga Bhatta Kasikar, a Deshast Brahman, was written about a century ago: it comprises twelve divisions, and treats of all subjects.

The Pursuram Prutap was composed by order of Sabají Pratap, Rája of the eastern Telinga country, about five hundred years ago. It is a general Digest.

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[1] श्रीशंकरभट्टात्मजभट्टनीलकंठकृते भगवन्नाम्नि व्यवहारमयूखे॥ 4to. Bombay, 1826.

[2] The Vyuvuhara Muyookhu, translated from the original by Harry Borradaile. 4to. Surat, 1827.

The Prithí Chandród is also a general Digest treating of Áchára, Vyavahára, and Práyaschitta.

The Vyavahára Sekar, by Nagojee Bhatta, a Deshast Brahman of Benáres, is a work of general notoriety.

The Sar Sangraha is a work treating of Práyaschitta Smárta, Vyavahára, &c.; but not fully.

The Madana Ratna, by Madana Singh, a Brahman of Hindústán, is a treatise on Áchára, Vyavahára, and Práyaschitta, of notoriety.

The Achararka, by Sunkur Bhatta Kasikar, is a work on Áchára and Vyavahára of general notoriety.

The Sarasvati Vilása, a general Digest, attributed to the King Pratáparúdra Déva, of the Kakateya family, but most likely compiled under his direction, is one of the chief authorities, after the Mitáksharà, in the whole of the southern portion of India. It was the standard law-book of his dominions, which comprehended the entire Andra country, and is still a book of great authority to the northward of the Pennar, where many customs exist, particularly regarding land tenures, which are derived from it; but it is even there, in some measure, subordinate to the authority of the Mitáksharà.

The Smriti Chandriká, by Devanda Bhatta, and which has been supposed by Colebrooke, who mentions it in terms of great praise, to have been the basis upon which the Mádhavíya was formed by Vidyáranyasvámi, is a general and excellent treatise according to the doctrine of the Drávida school. This, as well as the preceding work, is of high authority in the Andra country.

A Tamil abridgment of the Smriti Chandriká was published at Madras in the year 1826.[1]

The Dhárésvariya is mentioned by Ellis as a general Digest, which, though written by an author supposed to have lived

[1] An Abridgment, in the Tamil language, of the Smriti Chandricá, a treatise on the Municipal Law of the Hindús. By Madura Condaswámi Pulaver. Fol. Madras, 1826.

in the north of India, yet is received as an authority in the south.

Several writers have composed treatises especially devoted to the Law of Adoption; of these the Dattaka Mímánsá of Nanda Pandita, the author of the Vaijayanti, and the Pratitákshara, already noticed, is the most esteemed. Sutherland, in describing this work, says: "The Dattaka Mímánsá, as its name denotes, is an argumentative treatise, or disquisition, on the subject of adoption; and though, from the author's extravagant affectation of logic, the work is always tedious, and his arguments often weak and superfluous; and though the style is frequently obscure, and not unrarely inaccurate, it is on the whole, compiled with ability and minute attention to the subject, and seems not unworthy of the celebrity it has attained."[1]

The Dattaka Chandriká, by Devanda Bhatta, the author of the Smriti Chandriká, is a concise treatise on Adoption of great authority, and is supposed to have been the basis of Nanda Pandita's more elaborate work.

An edition of the text of the Dattaka Mímánsá, and the Dattaka Chandriká appeared at Calcutta in 1817.[2] Another edition of the text of the Dattaka Mimánsá was, I believe, published at Serampore in 8vo., N. D., but I have never seen it.[3]

The Dattaka Mímánsá, and the Dattaka Chandriká, have been admirably translated by Sutherland; and the Synopsis of the Law of Adoption, which he has appended to his work, though succinct, is eminently useful.[4] A French translation of the Dattaka Chandriká, by M. Orianne, also appeared in the year 1844.[5]

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[1] Sutherland's two Treatises on the Hindu Law of Adoption, Pref. p. ii.

[2] दत्तकमीमांसा दत्तकचंद्रिका ॥ 8vo. Calcutta, 1817.

[3] Brunet, Manuel de Libraire.

[4] The Dattaka Mímánsá and Dattaka Chandriká, two original treatises on the Hindu Law of Adoption, translated from the Sanscrit by J. C. Sutherland. 4to. Calcutta, 1821.

[5] Traité original des successions d'après le droit Hindou, suivi d'un autre

In addition to these treatises, Ellis mentions the Datta Mímánsá by Vidyáranyasvámi, the Datta Chandriká by Gangadéva Vazhey, the Datta Dípaka by Vyásáchárya, the Datta Kustabha by Nagóji Bhatta, and the Datta Bhúshana by Krishna Misra, as general Digests of the Law of Adoption.[1] He however gives no description of these works, and I do not find them spoken of by other writers on the subject. Sir Francis Macnaghten also speaks of a treatise on Adoption called the Dattaka Nirnaya, as the compilation of a celebrated Pandit of the name of Sri Natha Bhatta.[2]

The Law of Adoption does not exhibit much conflict of doctrine between the several schools, although some differences of opinion may be observed amongst the individual writers. It must be remarked, however, as an important distinction, that although the Dattaka Mímánsá and Dattaka Chandriká are equally respected all over India, yet where they differ, the doctrine of the latter is adhered to in Bengal, and by the southern Jurists; while the former is held to be the infallible guide in the provinces of Mithila and Benáres.[3]

Heláyudha, who is supposed to have flourished more than seven hundred years since, is the author of the Nyáyá Sarvaswa, the Brahmana Sarvaswa, and the Pandita Sarvaswa, as well as of other tracts on the administration of justice and the duties of cast.

Lakshmídhara wrote a treatise on the administration of justice, and also a Digest entitled Kalpataru, which is often cited.

Narasinha, son of Ramachandra, is the author of the Góvindárnava and other law tracts.

Traité sur l'Adoption, le Dattaca-Chandrica de Devandha-Bhatta. Par G. Orianne. 8vo. Paris, 1844.

[1] Ellis, on the Law Books of the Hindus, pp. 21, 22.

[2] Considerations on the Hindoo Law as current in Bengal, Pref. p. xiii.

[3] Macnaghten, Principles and Precedents of Hindu Law, Vol. I. Pref. p. xviii.

Jítendriya is often cited in the Mitákshará, and in the Digest of Jagannátha Terkapanchánana.

Since the establishment of the British empire in India, three several Digests of the Hindú law have been composed by native authors. The first, the Viváddrnava Sétu, was compiled by order of Warren Hastings; the second, the Viváda Sárárnava was written, at the request of Sir William Jones, by Serváru Trivédí, a Mithila lawyer; and the third and most celebrated is the Viváda Bhangárńava of Jagannátha Terkapanchánana, which has become generally known by the translation of the learned Colebrooke.

The first of these works was proposed as early as the 18th of March 1773, at the opening of the Court of Sudder Dewanny Adawlut of Bengal;[1] and in December in the same year it was reported to the President that the Digest was nearly completed in the Sanskrit language, and that a translation was being made into Persian for the purpose of being again translated into English. Early in the following year Warren Hastings transmitted a specimen of the English version[2] to the Court of Directors; and in the same year Mr. Halhed published the entire work in English, under the title of "A Code of Gentoo Laws."

The letter from Sir William Jones to the Supreme Council of Bengal, already quoted, at once describes and condemns this Code. "It consists," says the learned Judge, "like the Roman Digest, of authentic texts, with the names of their several authors regularly prefixed to them, and explained where an explanation is requisite, in short notes, taken from Commentaries of high authority. It is, as far as it goes, a very excellent work; but though it appears extremely diffuse on subjects rather curious than useful, and though the chapter

[1] Proceedings of the Governor and Council at Fort William respecting the Administration of Justice amongst the natives of Bengal, p. 33. 4to. 1774.

[2] Ib. p. 37 *et seq.*

on Inheritance be copious and exact, yet the other important branch of jurisprudence, the Law of Contracts, is very succinctly and superficially discussed, and bears an inconsiderable proportion to the rest of the work. But whatever may be the merit of the original, the translation of it has no authority, and is of no other use than to suggest inquiries on the many dark passages we find in it. Properly speaking, indeed, we cannot call it a translation; for though Mr. Halhed performed his part with fidelity, yet the Persian interpreter had supplied him only with a loose, injudicious epitome of the original Sanscrit, in which abstract many essential passages are omitted; though several notes of little consequence are interpolated, from a vain idea of elucidating or improving the text."[1]

The letter from which the above extract is taken proposed to the Government the compilation of a new Digest, which was to be confined to the Laws of Contracts and Inheritances, and to be based upon the great work of Raghunandana. The result of this proposition, which was gladly accepted by the Governor-General and the Members of Council, was the composition of the Vivádá Sárárnava and the Vivádá Bhangárnava. Sir W. Jones had himself undertaken a translation of these works, together with an introductory discourse, for which he had prepared "a mass of extremely curious materials,"[2] when the hand of death arrested his labours.

The Vivádá Bhangárnava, by Jagannátha Tarkapanchánana,[3] was, as above stated, compiled by its author at the suggestion of Sir W. Jones, and after his death was translated by

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[1] Sir W. Jones's Works, Vol. III. p. 76*. 4to. Lond. 1799.

[2] See his last Anniversary Discourse in the Asiatic Researches, Vol. VI. p. 168. 4th Edit.

[3] Jagannátha Tarkapanchánana was living in the year 1815, at the advanced age of 108 years, and resident at Tirveni, about thirty miles from Calcutta, where, surrounded by four generations of his descendants, in number nearly an hundred, he gave daily lectures to his pupils upon the principles of law and philosophy.—Harington's Analysis of the Bengal Regulations, Vol. I. p. 197, note. 2d Edit.

Colebrooke.[1] Like the Vivádá Sárárnava, it treats only of the Law of Contracts and Successions, omitting altogether the Law of Evidence, the Rules of Pleading, the Rights of Landlord and Tenant, and other topics, which, to render a Digest more generally useful in those Courts where the English law does not prevail, might have been advantageously inserted.

This Digest consists, like other works of the same nature, of texts selected from writers of authority, and a running commentary by Jagannátha, generally taken from former ones, and frequently containing frivolous disquisitions. The arrangement of the work renders its use inconvenient in the extreme; and it has been not inaptly characterised as "the best book for a counsel and the worst for a judge." Colebrooke himself almost disclaims it. In the Preface to the translation of the treatises on Inheritance he says: "And, indeed, the author's method of discussing together the discordant opinions maintained by the lawyers of the several schools, without distinguishing, in an intelligible manner, which of them is the received doctrine of each school, but, on the contrary, leaving it uncertain whether any of the opinions stated by him do actually prevail, or which doctrine must now be considered in force, and which obsolete, renders his work of little utility to persons conversant with the law, and of still less service to those who are not versed in Indian jurisprudence, especially to the English reader, for whose use, through the medium of a translation, the work was particularly intended."[2]

The doctrines maintained by Jagannátha are taken commonly from the Bengal school, and sometimes originate with himself; in which latter case, of course, they are not to be

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[1] A Digest of Hindu Law on Contracts and Successions, with a Commentary by Jagannátha Tercapanchánana. Translated from the original Sanscrit by H. T. Colebrooke. 4 Vols. Fol. Calcutta, 1797. 2d Edit. 3 Vols. 8vo. London, 1801.

[2] Colebrooke's two Treatises on the Hindu Law of Inheritance, Pref. p. ii.

considered as of paramount authority; but at the same time he ought not to be held responsible when his work is cited, as, it seems, was frequently done in former times by the southern Pandits, in opposition to the opinions maintained by the abler authors of the Mitáksharà, the Smriti Chandrikà, and the Mádhavíya. Colebrooke's regret, that the Pandits of the south of India had thus been furnished with means of adopting, in their answers, whatever doctrine might happen to be in accordance with the bias they might have contracted,[1] cannot be received as a condemnation of Jagannátha's work, but only of a venal practice of the law-officers of the southern Courts, which should have been discountenanced at the outset. Notwithstanding the unfavourable opinion of the Viváda Bhangárnarva pronounced by its learned translator, and although this opinion is certainly, in a great measure, justified by the work itself, there is no doubt but that it contains an immense mass of most valuable information, more especially on the Law of Contracts, and will be found eminently useful by those who will take the trouble of familiarising themselves with the author's style and method of arrangement.

In addition to these three general Digests may be mentioned the Vyavastháratnamálá[2] by Srí Lakshmí Náráyana Nyáyálankára. It is a modern work, modelled after the European plan of a Catechism, written in the form of questions and answers, in the vernacular language of Bengal, with quotations in Sanskrit from books of established authority, adduced in support of the principles advanced. The work of Srí Lakshmí Náráyana contains a succinct view of the law of inheritance according to the doctrines of Jímúta Váhana contrasted with those of the Mitáksharà, together with a short treatise on Adoption. This work was published at Calcutta in 1830.[3]

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[1] Colebrooke in Strange's Hindu Law, Vol. II. p. 176. 2d edit.

[2] See an account of this work in the Journal of the Royal Asiatic Society. Vol. I. p. 119.

[3] श्रीलक्ष्मीनारायणन्यायालंकारविरचितव्यवस्थारत्नमाला ॥ 8vo. Calcutta, 1830.

I have now, I think, described, if not the whole of the Hindú law-books extant, all those which treat of Vyavahára, which are alone applicable to the Hindú law as administered in British India. It remains to recapitulate the names of such works as are usually referred to as final authorities in the different schools, excluding the text-books and mere explanatory comments. They are as follows:—

1. Gauriya, or Bengal school.—Dharma Ratna. Dáya Bhága, and its Commentaries by Srikrishna Tarkálankára, and Srínátha Áchárya Chúdámani. Dáya Krama Sangraha. Smriti Tatwa. Dáya Tatwa. Vivádárnava Sétu. Viváda Sárárnava. Viváda Bhangárnava.
2. Mithila school.—Mitáksharâ. Viváda Ratnákara. Viváda Chintámani. Vyavahára Chintámani. Dvaita Parisishta. Viváda Chandra. Smritisára. Smriti Samuchchaya. Madana Párijáta.
3. Benáres school.—Mitáksharâ. Víramitrodaya. Mádhavíya. Viváda Tándava. Nirnaya Sindhu.
4. Mahárâshtra school.—Mitáksharâ. Mayúkha. Nirnaya Sindhu. Hémádri. Smriti Kustubha. Mádhavíya.
5. Drávida school.—
   (*a*) Drávida division.—Mitáksharâ. Mádhavíya. Sarasvati Vilása. Varadarájya.
   (*b*) Karnátaka division.—Mitáksharâ. Mádhavíya. Sarasvati Vilása.
   (*c*) Andra division.—Mitáksharâ. Mádhavíya. Smriti Chandriká. Sarasvati Vilása.

In questions of Adoption the Dattaka Mimánsá is preferred in Bengal and in the south; the Dattaka Chandriká in Mithila and Benáres.

It must not be inferred that these are all the works cited by the lawyers of the several schools, but that they are those quoted most frequently: nor, again, must it be concluded that

they are *all* constantly referred to in the Law Courts. Borradaile says, that on the Bombay side of India, three books alone were mentioned by the Sástrís as authorities in his time; viz. Manu, the Mitáksharâ, and the Mayúkha;[1] and Colebrooke states that in Benáres the ordinary phraseology of references for law opinions of Pandits from the native Judges of Courts established there, previous to the institution of Adawluts superintended by English Judges and Magistrates, required the Pandit, to whom the reference was addressed, "to consult the Mitáksharâ," and report the exposition of the law there found applicable to the case propounded.[2]

Lastly, it must be distinctly remembered, that no work of the Bengal school can be considered to be concurrent or interchangeable with the writings which prevail in the other schools, or of any authority out of the limits within which the Bengálí is the language of the people, with the exception, however, already noticed, regarding the Law of Adoption; and that, although the works above enumerated, which are not according to the Bengal school, are, for the most part, only quoted in those schools under which they are arranged, there seems to be no reason why such works might not be received as authorities indiscriminately in Mithila, Benáres, and the Maratha and Drávida countries, but of course being of greater or less weight according to the custom of each country.

Before I proceed to the description of the fourth class of works on Hindú law, which I have already alluded to, viz. those by European authors, I may mention two modern native compilations which cannot with propriety be ranged under any of the preceding heads. They are collections of opinions compiled from the Dáya Bhága and other works, and seem to correspond with the books of *Fatwas*, which form so considerable a portion of the Muhammadan legal literature: the authors of

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1 Borradaile's Bombay Reports, Pref. p. iii.

2 Colebrooke in Strange's Hindu Law, Vol. I. p. 317. 2d Edit.

these collections are Ramjeeyn Tarkálankára, and Lakshmí Náráyana Nyáyálankára.[1] I have never seen these compilations, but they are mentioned in a Letter from the Bengal Government to the Court of Directors, dated the 22nd of Feb. 1827, as being among the works encouraged or patronised by the Government.[2] A compilation in Telugu from the Mitákshará and other works may also here be mentioned.[3]

It must be acknowledged that the method pursued by the Hindú writers on jurisprudence is often very obscure, and always highly uncongenial to European taste; the student will therefore turn with pleasure to the elegant work of Sir Thomas Strange, the sound, though often too severe, criticism of Sir Francis Macnaghten, and the concise and explicit Principles of Hindú Law by his son.

Sir Francis Macnaghten, who was the first writer of an original treatise on Hindú Law, was promoted to the Bench of the Supreme Court at Madras in May 1809, having previously acted as Advocate-General at Calcutta, where, it is said, he had little or no employment except in his official capacity:[4] he was afterwards, in July 1815, removed to the Supreme Court at Bengal. In the year 1824 he published his Considerations on the Hindú Law,[5] which he himself states he commenced and completed in that year. It is a valuable work, consisting of an enunciation of principles illustrated copiously by argu-

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[1] Byabustha Sungruha: a Collection of Opinions compiled by Ramjeeyn Tarkalunkar, from the thirty-six original books of Dayubhagu, &c.; with the authorities of Munoo, &c. Byabustha Sungruhu; or, a Collection of Opinions compiled by Lukshmee Narryana Nyayalunkra, from the original books of Dayabhaga, &c; with the authorities of Munoo, &c.

[2] Fourth Appendix to the Report from the Select Committee of the House of Commons in 1832, p. 64. 4to. Edit.

[3] Vyavahara Durpanum. A compilation of the Vijnanaswareyum, Smritichendrika, and several other works on Hindú Law. Revised by Vuttyum Vasoodeva Para Bhrummah Saustrooloo. 8vo. Madras, 1851.

[4] Anglo India, Vol. I. p. 204. 3 Vols. 8vo. London, 1838.

[5] Considerations on the Hindoo Law as it is current in Bengal. By Sir Francis Macnaghten. 4to. Serampore, 1824.

ments and decided cases, which are, in most instances, given *in extenso:* the last two chapters are translations from the Mitákshará, and have been already mentioned. The Preface to the Considerations speaks in the most disparaging terms of the Hindú Law, and yet, at the same time, advocates its preservation: it is to be regretted that the whole work is pervaded by a spirit of exaggerated self-estimation and unjust depreciation of every thing not consonant with the author's professional prejudices.

Sir Thomas Strange, who filled successively at Madras the offices of Recorder and first Chief Justice of the Supreme Court of Judicature, published the first edition of his admirable work on Hindú Law in 1825, after several years spent in the collection of materials; and a second and revised edition appeared in 1830.[1] Sir Thomas Strange seems to have possessed most of the qualities which are requisite for an Indian Judge: his disposition was mild, and his manners courteous: and although he had not attained any knowledge of the languages of India, he was imbued with a strong predilection in favour of the natives, and spared no pains, and omitted no opportunity of gaining information on the subject of their laws and institutions. The amiability of his temper is peculiarly evinced by the manner in which he speaks[2] of Sir Francis Macnaghten's severe remarks upon one of his judgments,[3] affording a marked contrast to the caustic and arrogant style in which Sir Francis too frequently indulged. The excellent work of Sir Thomas Strange leaves little to desire, so far as regards the Hindú Law of the south of India; whilst the clearness of arrangement, the aptness of the illustrations, and the elegance of its diction, well entitle it to a place by the

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[1] Hindu Law, principally with reference to such portions of it as concern the Administration of Justice in India. By Sir Thomas Strange. 2 Vols. 8vo. London, 1830.

[2] Strange's Hindú Law, Vol. II. Pref. p. viii. 2d edit.

[3] Considerations on the Hindoo Law, p. 186 *et seq.*

side of the Commentaries of Blackstone. The cases which the learned author has appended to his work, under the title of "Responsa Prudentûm," are very valuable, and they are rendered still more so by the numerous notes and illustrations which are constantly added by Colebrooke, Sutherland, and Ellis.

The Principles and Precedents of Hindú Law,[1] by Sir William Hay Macnaghten, merit the attentive study of all who desire to attain a knowledge of that law: the "Principles" are clear, concise, and lucid in their order, and the cases given under the title of "Precedents," are of a most important nature. The latter are entitled to great weight, as having been selected, as we are told by the learned author himself, with the utmost care and attention. The whole work was composed, as appears from the Preface, after collecting all the information that could be procured from every quarter, and after a careful examination of all the original authorities, and of all the opinions of the Pandits recorded in the Supreme Court at Calcutta for a series of years. In a late judgment delivered by the Judicial Committee of the Privy Council, Sir W. Macnaghten's work is mentioned as by far the most important authority amongst the Hindú law-books by European authors; and it is stated, on the information of Sir Edward Ryan, to be constantly referred to in the Supreme Court at Calcutta as all but decisive of any point of Hindú law contained in it; and that more respect would be paid to it by the Judges there, than to the opinions of the Pandits.[2]

Steele's Summary of the Law of Cast,[3] printed by order of the Governor in Council of Bombay, is inconvenient of reference, on account of its defective arrangement; but it contains

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[1] Principles and Precedents of Hindu Law, by W. H. Macnaghten. 2 Vols. 8vo. Calcutta, 1829.

[2] *Rungama* v. *Atchama and others*. 4 Moore's Indian Appeals. p. 101.

[3] Summary of the Law and Custom of Hindoo Castes within the Dekhun Provinces subject to the Presidency of Bombay, chiefly affecting Civil Suits. By Arthur Steele. Fol. Bombay, 1827.

a mass of useful information, and may always be consulted with advantage. He divides his work into three parts, Law, Casts, and Existing Customs; the two latter divisions being especially useful, as containing a quantity of matter not to be met with elsewhere. The same remark applies to the two Appendices, one on the customs of particular Casts of Poona, the other on the customs of the Gosáyins. Mr. Steele has prefaced his work by what is designated a List of Sanskrit Law-books; but it is encumbered with the titles of a number of works which are foreign to the subject, and the names of all are so disfigured by an uncouth rendering of the Maratha pronunciation as to be scarcely intelligible.

A treatise on the Hindú Law of Inheritance, Gift, &c., was published a few years since at Calcutta, by Mr. Eberling;[1] but, so far as I have been able to ascertain, no copy of it has as yet reached this country.

Colebrooke's treatise on Obligations and Contracts[2] scarcely comes within the class of works treating of Hindú law, inasmuch as it relates to the subject of contracts generally; he has, however, illustrated the law of contract throughout by reference to the Hindú system; and the student will find much that is valuable regarding that system under those titles which Colebrooke has completed. Unfortunately the work was never finished, and the Preface, together with the preliminary and introductory matter, promised by the author in the first and only published part, never saw the light.

M. Gibelin published a work at Pondicherry, in 1846-47, which may be pointed out to the reader's notice as exhibiting a comparison between the civil law of the Hindús, the laws of Athens and Rome, and the customs of the Germans.[3] M. Gibe-

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[1] See the Calcutta Review, No. XIII.

[2] A Treatise on Obligations and Contracts. By H. T. Colebrooke. Part I. (all published), 8vo. London, 1818.

[3] Études sur le droit civil des Hindous; recherches de législation comparée sur les lois de l'Inde, les lois d'Athènes et de Rome et les coutumes des Germains. Par E Gibelin. 2 Tomes, 8vo. Paris, 1846-47.

lin's volumes, in their comparative portion, are very interesting; but there is much irrelevant speculation, and they are disfigured by a number of fantastical etymologies, which are quite as extravagant as any that are to be found in the pages of Bryant, Vallancey, or Alexander Murray.

An excellent manual of Hindú Law from the pen of Mr. T. L. Strange, son of the accomplished Sir Thomas, and a Judge of the Sudder Adawlut, was published at Madras in 1856.[1] It is expressly written with the view of presenting the results of Sir Thomas' labours in a cheap and compendious form, together with such additional materials as the working of the Courts since his time have furnished. Mr. Strange has executed his task with great ability, and the reader will find in a book of but 75 pages, a satisfactory summary of the Hindú Law, as applied in our Courts in India. The 13th Chapter contains some curious and interesting particulars relating to the Malabar Law.

The last mentioned treatise completes the list of works relating to the Hindú law by Europeans. It is to be regretted that they are so few in number; but when taken in conjunction with the translations from the original works, they are sufficient to enable the student to acquire a very considerable knowledge of the Hindú system of jurisprudence.

(2) The Muhammadan Law.

(*a*) *On the Sources of the Law.*

The Muhammadan law, like that of the Hindús, is professedly founded upon revelation; and the Kurán, though variously interpreted, is regarded by the Musulmáns of every denomination, as the fountain-head and first authority of all law, religious, civil, and criminal.

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[1] A Manual of Hindoo Law. By Thomas Lumsden Strange, Esq. 8vo. Madras, 1856.

Whenever the Kurán was not found applicable to any particular case, which soon happened as the social relations and wants of the Arabs became more extended, recourse was had to the Sunnah (precept and example), or Hadís (sayings, tradition), that is, the oral law, which was, and is at the present day, held to be only second in authority to the Kurán itself. Thus the Kurán and the Sunnah stand in the same relation to each other, as the Mikrah and Mishnah of the Jews: and it may be remarked, that the words in both the Arabic and Hebrew languages are derived from similar roots, and have the same significations.

The Sunnah or Hadís,[1] the second authority of Muhammadan law, comprises the actual precepts, actions, and sayings of the Prophet himself, preserved by tradition, and handed down by authorised persons.

It may here be remarked, that the word "tradition" must in no wise be taken in the sense in which we are accustomed to use it; the traditions being records of facts, many of them it is true merely orally preserved, but preserved with the greatest care and circumspection; and many of them having been actually written down even during the lifetime of Muhammad, and soon after his death, but the writings destroyed

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[1] The word Sunnah is used generally, to signify all the traditions both of the sayings and doings of the Prophet, and the term Hadís is employed in the same comprehensive sense. M. De Slane says, "The distinction between the Hadíth (sayings), and the Sunan (doings), is not attended to by doctors of the Moslim law: both are equally authoritative." See كتاب وفيات الاعيان Ibn Khallikan's Biographical Dictionary, translated by the Baron M'Guckin de Slane, Vol. I. Introduction, p. xvni. note. 3 Vols. 4to. London, printed for the Oriental Translation Fund in 1842–45. - M. De Slane's translation is a most valuable work to those who wish to gain a knowledge of the legal literature of the Muhammadans, as he has added to the text numerous learned notes, replete with curious and interesting information relating to the Muhammadan law and lawyers. It is to this translation that all the references to Ibn Khallikan, made in the notes to the following pages, must be understood to apply.

when the writers had committed their contents to memory. The learned and indefatigable Dr. Sprenger, late Principal of the Calcutta Madrasah, was the first to point out this distinction between "traditions," as we understand the word, and the "Muhammadan traditions;"[1] a distinction which is all-important, since the latter form an immense mass of contemporary record relating to the life, precepts, and actions of Muhammad, more voluminous and more authentic than is to be found in the literature of any other nation, applicable to any particular period. The precepts and traditions are divided into two classes, viz. the Kuds (holy), which are supposed to have been directly communicated to Muhammad by the angel Gabriel; and the Nabawí (prophetic), or those which are from the Prophet's own mouth, and are not considered as inspired;[2] both these, however, have the force of law, and, with the Kurán, constituted the whole body of the law at the time of Muhammad's death. "I leave with you," said the Prophet, "two things, which, so long as you adhere thereto, will preserve you from error: these are, the Book of God, and my practice."

In addition to the Kurán and the Sunnah or Hadís, there are two other great sources of Muhammadan law, viz. the Ijmá' (concurrence), and the Kiyás (ratiocination).

The Ijmá' is composed of the decisions of the Companions of Muhammad (Sahábah), the disciples of the Companions

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[1] Sprenger's Life of Mohammad, Vol. I. Allahábád, 8vo. 1851, p. 67 *et seq.* Sprenger, On the origin and progress of writing down historical facts among the Musulmans: see the Journal of the Asiatic Society of Bengal, Vol. XXV. p. 304. Dr. Sprenger is now engaged in preparing a revised edition of the first volume of his Life of Muhammad, and the continuation of his work.

[2] Other less important divisions and sub-divisions of the Sunnah have been made, classing them according to their respective value and authenticity, or the time in which they were first known or collected. See Harington's Analysis, Vol. I. p. 225, note, 2nd edit. Journal Asiatique, 4me Série, Tome xv. p. 185, note.

(Tábi'ún), and the pupils of the disciples: these decisions are said to have been unanimous, and are next in authority to the Kurán and the Sunnah.

Both the Sunnah and the Ijmá' were originally preserved by tradition, and were transmitted through successive generations by learned men, who made the study of the Kurán and the traditions, and their memorial preservation, an especial object. These learned men were called Háfiz (preserver);[1] and in communicating their narratives to their disciples, they invariably mentioned, as a kind of preface, the series of persons through whom they had successively passed before they came into their possession: this preface is called the Isnád (support), and according to the credibility attached to the narrators whose names are enumerated as the Isnáds, depends the authenticity and authority of the tradition related; some sects absolutely rejecting traditions which are received as authoritative by others. The Isnáds were retained in the books after the Sunnah and the Ijmá' had become reduced to writing, and collected together in the works which will presently be noticed.

The Kiyás, which is the fourth source of the Muhammadan law, consists of analogical deductions derived from a comparison of the Kurán, the Sunnah, and the Ijmá', when these do not apply either collectively or individually to any particular case. This exercise of private judgment is allowed, with a greater or less extension of limit, by the different Muhammadan sects; some, however, refusing its authority altogether.

Since it appears, then, that although the sources of the law are the same throughout the Muhammadan world, there is a variety in the manner of their reception, and in the laws

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[1] The appellation of Háfiz is given to any one who knows the Kurán by heart; but it is more particularly used by the Sunní writers to designate those who have committed to memory the six great collections of traditions, and who can cite the Isnáds with discrimination.

derived from them, it becomes necessary to describe shortly the principal sects, and to state the chief points of difference in their opinions as to the sources of the law.

(*b*) *On the Principal Muhammadan Sects, and their Legal Doctrines.*

The dissensions which arose on the death of the Prophet, with regard to the succession to the Khiláfat, were revived with renewed fury when, on the murder of 'Usmán, the noble and unfortunate 'Alí succeeded to the dignity of Amír al-Múminín; and they eventually caused the division of Islám into two great parties or sects, called respectively the Sunnís, and the Shí'ahs,[1] who differ materially in the interpretation of the Kurán, and in admitting or rejecting various portions of the oral law. The hatred entertained between these rival sects has been the cause of constant religious wars and persecutions scarcely to be surpassed in the history of any nation or creed, and still separates the followers of Muhammad into two classes, by a barrier more insurmountable than that which divides the Roman Catholic from the Protestant.

The Sunnís, who assume to themselves the appellation of orthodox, uphold the succession of the Khalífahs Abú Bakr, 'Umar, and 'Usmán, and deny the right of supremacy, either spiritual or temporal, to the posterity of 'Alí. They are divided into an infinity of sects; but of these it will be sufficient in this place to notice the four principal only, which agree one with another in matters of faith, but differ slightly in the form of prayer, and more especially with regard to the exercise of the Kiyás, and the legal interpretation of the Kurán where the latter relates to property.[2]

[1] The word Shí'ah, which signifies sectaries, or adherents in general, was used to designate the followers of 'Alí as early as the 4th century of the Hijrah. Reland, De Relig. Mohamm. p. 37.

[2] For a fuller account of the various Sunní sects, see Maracci, Prodromus, Pars III. p. 72 *et seq.*; Pococke, Specimen Historiæ Arabum,

These four principal sects, which are called after their founders, originated with certain eminent Mujtahid Imáms, named respectively Abú Hanífah, Málik Ben Anas, Muhammed ash-Sháfi'í, and Ahmad Ben Hanbal. Two other Imáms were also the founders of Sunní sects; these were Abú 'Abd Allah Sufyán as-Sauri,[1] and Abú Dáwúd Sulaimán az-Záhiri,[2] but they had but few followers; and a seventh sect, which had for its chief the celebrated historian At-Tabarí,[3] did not long survive the death of its author.

Abú Hanífah Nu'mán Ben Sábit al-Kúfí, the founder of the first of the four chief sects of Sunnís, and the principal

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pp. 17 *et seq.*, and 212 *et seq.*; and Sale, Koran, Preliminary Discourse, sect. 8. The most celebrated work which treats of this subject is the Kitáb al-Milal wa an-Nihal, by Abú al-Fath Muhammad ash-Shahrastáni, who died in A.H. 548 (A.D. 1153). The original text of Ash-Shahrastáni, has been edited by the Rev. Canon Cureton, and was printed for the Society for the Publication of Oriental Texts in 1842—1846. It is entitled, كتاب الملل و النحل Book of Religious and Philosophical Sects. A translation of this work has also since appeared by Dr. Haarbrücker, the title of which is, Abu-l-Fath Muhammad asch-Schahrastani's Religionspartheien und Philosophenschulen. 8vo. Halle, 1850.

[1] As-Saurí was born at Kúfah in A.H. 95 (A.D. 713), and died at Basrah, where he had concealed himself in order to avoid accepting the office of Kází, in A.H. 161 (A.D. 777).—Ibn Khall. Vol. II. p. 577; An-Nawawí, p. ٢٨٦

[2] Az-Záhirí was so called because he founded his system of jurisprudence on the *exterior*, or literal meaning of the Kurán and the traditions, rejecting the Kiyás. He was born at Kúfah in A.H. 202 (A.D. 817), and died at Baghdád in A.H. 270 (A.D. 883). He was a great partisan of Ash-Sháfi'í.—Ibn Khall. Vol. I. p. 501. And see تهذيب الاسماء The Biographical Dictionary of Illustrious Men, by Abu Zakariya Yahya el-Nawawi, edited by Dr. Wüstenfeld, p. ٣٣٦. 8vo. Göttingen, printed for the Society for the Publication of Oriental Texts, 1842—1847. All the references to An-Nawawí's work in the following pages apply to this edition.

[3] Abú Ja'far Muhammad Ben Jarír at-Tabarí was born at Ámul in Tabaristán in A.H. 224 (A.D. 838), and died at Baghdád in A.H. 310 (A.D. 922).—Ibn Khall. Vol. II. p. 597; An Nawawí, p. ٥٠١.

of the Mujtahid Imáms who looked to the Kiyás as a main authority upon which to base decisions, was born at Kúfah in A.H. 80 (A.D. 699), at which time four, or as some authors say, six of the Companions of the Prophet, were still living. Abú Hanífah died in prison at Baghdád in A.H. 150 (A.D. 767),[1] having been placed in confinement by the Khalífah Al-Mansúr, on account of his having refused to accept of the office of Kází, from a consciousness of his own inefficiency; a refinement of modesty of which the Arabian lawyers may well be proud, since it is doubtful whether the biography of the jurisconsults of all nations and ages would present another instance of the same self-denial and suffering from similar motives. Unluckily, however, for Abú Hanífah's character, his consistency does not seem to have equalled his conscientious self-depreciation; for we find that he was originally a strong partisan of the house of 'Alí; and it is even hinted that the cause of his subsequent change of opinion was to be traced to interested motives. The doctrine of Abú Hanífah, at first, prevailed chiefly in 'Irak; but afterwards became spread over Assyria, Africa, and Máwará an-Nahar. It is at present very generally received throughout Turkey and Tátary, and, together with that of his two disciples, Abú Yúsuf and Muhammad, is the chief, and with but rare exceptions, the only authority which governs the Sunní law in India.

Abú 'Abd Allah Málik Ben Anas, the founder of the second Sunní sect, was born at Madínah in A.H. 95 (A.D. 713), and died at the same place in A.H. 179 (A.D. 795). From the circumstance of his birth and death occurring at that city, he is sometimes called the Imám Dár al-Hijrah. Málik in his youth, had the advantage of the society of Sihl Ben Sa'd, almost the sole surviving Companion of the Prophet; and it is supposed that from him he derived his extreme veneration for the traditions. He was also intimate with Abú Hanífah, but he never imbibed that doctor's excessive partiality for the

[1] An-Nawawí, p. ٦٦٨

Kiyás.[1] The tenets of Málik Ben Anas are principally respected in Algeria, Tunis, Tripoli, Senegal, and almost the whole of Africa: they are not known to prevail in any portion of India.[2]

Abú 'Abd Allah Muhammad Ben Idrís ash-Sháfi'í was born at 'Askalán in A.H. 150 (A.D. 767), and eventually became the founder of the third of the chief Sunní sects. Ash-Sháfi'í had the distinguished honour of belonging to the same stock as the Prophet himself, being descended from 'Abd al-Mutallib, the son of 'Abd Manáf, the ancestor of Muhammad. For this reason he is known by the surname of Al-Kuraishí al-Mutallibí. In his youth he was a pupil of Málik Ben Anas: he died at Cairo in A.H. 204 (A.D. 819).[3] Ash-Sháfi'í's doctrine has a limited range amongst the Muhammadan inhabitants of the sea-coast of the peninsula of India;[4] but the chief seats of its authority are Egypt and Arabia. It is also said to be in some repute amongst the Malays and the Musulmans of the Eastern Archipelago. His followers were at one time very numerous in Khurásán; but at present his opinions are rarely quoted, either in Persia or India.

Abú 'Abd Allah Ahmad ash-Shaibání al-Marwazí, generally known by the name of Ibn Hanbal, the founder of the fourth Sunní sect, was born at Baghdád in A.H. 164 (A.D. 780), and died in A.H. 241 (A.D. 855). This learned doctor, who was a pupil of Ash-Sháfi'í, strenuously upheld the opinion that the Kurán was uncreated, and that it had existed from all eternity. Since, however, it happened unfortunately that

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[1] Ibn Khall. Vol. II. p. 545.

[2] Herklots, Qanoon-e-Islam, 8vo. London, 1832, p. 244, note.

[3] Ibn Khall. Vol. II. p. 569. An-Nawawí, p. ٥٦.

[4] Colonel Vans Kennedy says, "His doctrine is also followed by the descendants of the Arabs, the Mapillas of Malabar, which renders a reference to his peculiar opinions frequently necessary at Bombay."—Journal of the Royal Asiatic Society, Vol. II. p. 81. Herklots says they are met with principally at Nagore, near Negapatam, on the Coromandel coast.—Qanoon-e-Islam, p. 244, note.

the Khalífah Al-Mu'tasim maintained the contrary doctrine, Ibn Hanbal was greatly persecuted for his persistent opposition to that monarch's favourite belief. It is related in history that no fewer than 800,000 men and 60,000 women were present at this doctor's funeral; and that 20,000 Christians, Jews, and Magians became Muhammadans on the day of his death.[1] Whatever degree of credit may be attached to this extraordinary statement, its mere existence sufficiently attests the astonishing reputation which Ibn Hanbal had acquired during his lifetime, and the veneration in which he was held after his death. Persecution, however, soon thinned the ranks of his followers; and though at one time they were very numerous, the Hanbalís are now seldom to be met with out of the confines of Arabia.

Of these four chief sects of the Sunnís, the followers of Málik and Ibn Hanbal may be considered as the most rigid; whilst those of Ash-Sháfi'í may be characterised as holding doctrines most conformable to the spirit of Islám, and the sectaries of Abú Hanífah, as maintaining the mildest and most philosophical tenets of all.[2]

The second great Muhammadan sect, the Shí'ahs, uphold the supremacy of 'Alí Ben Abí Tálib, the second convert to Islám, the cousin and son-in-law of Muhammad, and one of the ablest and bravest of all the Arabian chieftains. The Shí'ahs assert that 'Alí was the only lawful successor of the Prophet, and that both the Imámat and Khiláfat, that is, the supreme spiritual and temporal authority, devolved of right upon him and his posterity, notwithstanding that they were actually and unjustly ousted by the Khalífahs of the Bení Umayyah and Bení 'Abbás. The Shí'ahs are divided into five principal sects,[3] which differ in points of faith and religious

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[1] Ibn Khall. Vol. I. p. 14; An-Nawawí, p. ١٤٢.

[2] Ibn Khall. Vol. I. Introduction, p. xxvi.

[3] Von Hammer only allows four principal sects.—Geschichte der Assassinen, p. 25. I follow Ash-Shahrastaní.

doctrine; and these again are subdivided into many distinct classes: the Shí'ah sects, however, with a few trifling exceptions, never held any variety of opinion in matters of law.[1]

The Shí'ah doctrines were adopted by the Persians at the foundation of the Safaví dynasty in A.H. 905 (A.D. 1499), and from that period until the present time, have prevailed as the national religion and law of Persia, notwithstanding the violent efforts to substitute the Sunní creed made by the Afghán usurper Ashraf, and the great Nádir Sháh. There are, also, numerous Shí'ahs in India, though but few when compared with the Sunnís; and a small number are to be found in the eastern portion of Arabia. During the Muhammadan period of Indian history, the Shí'ahs were chiefly confined to

[1] Some account of the tenets of the Shí'ahs will be found in the following works:—كتاب الملل و النحل, p. ١٠٨ *et seq.*; Haarbrücker's Schahrastani, p. 164 *et seq.*; Pococke, Specimen Historiæ Arabum, pp. 33 and 257; Maracci, Prodromus, p. 80; Sale, Koran, Preliminary Discourse, sect. 8; Von Hammer, Geschichte der Assassinen, p. 25 *et seq.*; Malcolm, History of Persia, Vol. II. p. 346 *et seq.* In order, however, to obtain an accurate knowledge on the subject, the Shí'ah authorities must be consulted. Amongst these, the Hakk al-Yakín, by Muhammad Bákir Ben Muhammad Takí, who dedicated his work to Sháh Sultán Husain Safaví, is deservedly one of the most celebrated. It contains a body of the theology of the Shi'ahs, and quotes and refutes the arguments opposed to the opinions advanced, illustrating the whole with evidences of the truth of the Shí'ah doctrines, and with numerous traditions. There is also a very interesting little work by Abú al-Fatúh Rází Makkí, entitled the Risálat-i, or Kitáb-i Hasaníyah, which has a great reputation amongst the Shi'ahs, particularly in Persia. It consists of an imaginary disputation between a Shí'ah slave-girl and a learned Sunní jurisconsult, on the merits of their respective doctrines, in which, as a matter of course, the girl utterly discomfits her opponent. The argument is very ingeniously managed, and the treatise, taken altogether, furnishes a good and concise exposition of the tenets of the Shí'ahs, and the texts on which their belief is founded. The Risálat-i Hasaníyah was translated from the Arabic into Persian, by Ibráhím Astarábádí, in A.H. 958 (A.D. 1551). Both of these works have been printed in Persia, with great accuracy and elegance. كتاب حسنيّه fol. Tehran, A.H. 1239 (A.D. 1823), كتاب حقّ اليقين fol. Tehran, A.H. 1241 (A.D. 1825).

the kingdoms of Bíjápúr and Golconda,[1] their sect never having been suffered to make any progress in Hindústán, where the religion of the state was according to the tenets of the Sunnís. Since the British rule, however, those who profess the Shí'ah faith are no longer persecuted, or forced to conceal their opinions; and although the majority of the Musulmáns in India still adhere to the doctrines of Abú Hanífah, the Shí'ah is allowed to celebrate unmolested the tenth of Muharram, and to mourn the untimely fate of the virtuous Husain, and the martyrs of the plain of Karbalá.

These are the principal sects of the Muhammadans who differ in opinion with regard to legal doctrine. I have already stated that the Kurán is universal in its authority; but this must be understood with the reservation that such authority depends upon its interpretation, and that the latter differs according to the views of the principal commentators of the various sects, the Shí'ahs more especially rendering the meaning of many texts in a manner totally opposed to their acceptation by the sects of the Sunnís.

The traditions and the Ijmá' are, in like manner, looked upon by all Musulmáns as authoritative in the second degree; but, as I have mentioned above, their value varies, and depends upon their Isnáds. Many writers on the religion and laws of the Muhammadans have asserted that the Shí'ahs reject entirely the authority of tradition. Nothing, however, can be more erroneous than this assertion, since all Shí'ahs admit the legality of the Sunnah, when verified by any of the Twelve Imáms;[3] and all equally venerate the precepts and examples,

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[1] Chardin, Tome IX. p. 27; Bernier, Tome I. p. 285.

[2] Elphinstone, History of India, Vol. II. p. 201. 2nd edit.

[3] 'Alí, and his immediate posterity, are called the Twelve Imáms by the Shí'ahs, and the title thus employed must not be confounded with its indiscriminate use by the Sunní sects, who applied it to a large number of eminent doctors. The Shí'ahs consider the title of Imám as a sacred appellation, and restrict it entirely to 'Alí and his descendants; holding that the

both of the Prophet and the Twelve Imáms themselves, and the traditions that have been handed down by the friends and and partisans of 'Alí,[1] rejecting only such portions of the Sunnah as are derived from persons contaminated by crime or disobedience to God. In the latter class they range all the traditions recorded on the authority of the first three Khalífahs, and of such of the Companions, the Tábi'ún, and their disciples, as were not included amongst the supporters of 'Alí Ben Abí Tálib. The error with regard to the Shí'ah doctrine in matters of tradition seems to have arisen from the fact, that our knowledge of their tenets has been almost entirely taken from Sunní sources, in which the word Sunnah is used to signify exclusively the traditions of the Sunnís; and also that the Shí'ahs themselves almost invariably employ that word when speaking of the Sunní traditions, calling their own Hadís, and even referring to the Sunnís as the Ahl-i Sunnah (people of the Sunnah), in contradistinction to themselves, whom they generally call the Ahl-i Bait (people of the house of the Prophet). When, therefore, it is asserted that the Shí'ahs reject the authority of tradition, it must only be understood to mean that they pay no regard to the Sunnah recorded by the enemies of 'Alí: they of course repudiate the doctrines of the founders of the principal Sunní sects, holding their names even in abhorrence.[2] What has been said with regard to the traditions as received by the Shí'ahs, applies equally to the Ijmá', the

office of Imám is not a matter depending upon the choice of the people, but a fundamental article of religion. The names of the Twelve Imáms are, 'Alí Ben Abí Tálib al-Murtaza, Hasan Ben 'Alí al-Mujtaba, Husain Ben 'Alí ash-Shahíd, 'Alí Ben Husain Zain al-'Ábidín as-Sajjád, Muhammad al-Bákir, Ja'far as-Sádik, Músa al-Kásim, 'Alí ar-Rizá, Muhammad al-Jawád, 'Alí al-Hádí, Hasan al-'Askarí, and Muhammad Abú al-Kásim al-Mahdí. The last of these is supposed to be concealed, and not dead; and it is believed by the Shí'ahs that he will re-appear at the last day; whilst, in the mean time, it is unlawful and impious to give the title of Imám to any other.

[1] These are enumerated in the third and fourth books of the Majális al-Múminín, a work to which I shall shortly recur.

[2] Malcolm, History of Persia, Vol. I. p. 358.

authority of which depends upon the source from whence it is derived.

The Kiyás, as I have mentioned in a former page, is variously received by the different sects. It seems pretty clear, from a tradition recorded in the Mishkát al-Masábih,[1] that the exercise of private judgment was acknowledged and authorised by the Prophet himself. In the first, second, and third centuries of the Hijrah, the principal jurisconsults appear to have founded their practice upon that of their predecessors; but some, venturing to rely upon analogical deduction from the first three sources of the law, were called Mujtahids, because they employed the utmost efforts of their minds to attain the right solution of such questions of law as were submitted to their judgment.[2]

Amongst the Sunní sects, Mujtahids are classed under three principal divisions, according to the degree of Ijtihád which they may have attained. The word Ijtihád signifies, in its most common acceptation, the striving to accomplish a thing, the making a great effort; but in speaking of a law-doctor, it denotes the bringing into operation the whole capacity of forming a private judgment relative to a legal proposition.[3]

The chief degree of Ijtihád conferred on its possessor a total independence in legislative matters, and he became, as it were, a connecting link between the law and his own disciples, who had no right to question his exposition of the Kurán, the Sunnah, and the Ijmá', even when apparently at variance with

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[1] Mischát ul Masábih, translated by Capt. Matthews, Vol. II. p. 222.

[2] For the exact meaning of the word Mujtahid see Silvestre de Sacy's Chrestomathie Arabe, Tome I. p. 169 *et seq.*; the works there quoted; and Harington's Analysis, Vol. I. p. 233 (2d edit.) M. De Slane gives the best and most concise definition; viz. "The term Mujtahid is employed in Moslim divinity to denote a doctor who exerts all his capacity for the purpose of forming a right opinion upon a legal question."—Ibn Khall. Vol. I. p. 201, note.

[3] This definition is quoted from the Kitáb Taarífat, by Silvestre De Sacy, in his Chrestomathie Arabe, Tome I. p 169.

those elements or sources of jurisprudence. The Mujtahids of this first class were very frequent in the three first centuries of the Hijrah; but in later times the doctrines of the law becoming more fixed, the exercise of private judgment, to an unlimited extent, soon ceased to be recognized. Some later doctors, At-Tabarí and As-Suyútí for instance, claimed the right, but it was refused to them by public opinion.[1] The Mujtahids of the first class, who lived in the first century of the Hijrah, are esteemed of higher authority than those who flourished in the second and third.

Those Mujtahids, who had arrived at the second degree of Ijtihád, possessed the authority of resolving questions not provided for by the authors of the chief sects, and were the immediate disciples of the acknowledged Mujtahids of the first class, who, in some instances, allowed their pupils to follow and teach opinions contrary to their own doctrines, and occasionally even adopted their views.

Those who had attained the third degree of Ijtihád were empowered to pronounce, of their own proper authority, sentences in all cases not provided for by the founders of the sects or their disciples. Their sentences were, however, to be derived from a comparison of the Kurán, the Sunnah, and the Ijmá', taken conjointly with the opinions of the Mujtahids of the first and second classes; and they were not authorised to controvert their published doctrines, either respecting the elements of the laws, or the principles derived therefrom. Mujtahids of the third class were required to possess a perfect knowledge of all the branches of jurisprudence, according to the doctrines of all the schools; and the class comprises a large number of doctors, of greater or less celebrity, some of whom were raised to the rank during their lifetime, but the greater portion subsequently to their decease.

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[1] Ibn Khall. Vol. I. p. 201, note; Journal Asiatique, 4me Série, Tome XV. p. 183.

As a title, the term Mujtahid has long since fallen into disuse amongst the Sunnís.[1]

Ibn Khaldún says, speaking of the exercise of the Kiyás, as allowed by the chief Sunní sects—"The science of jurisprudence forms two systems, that of the followers of private judgment and analogy (Ahl ar-Ráï wa al-Kiyás), who were natives of 'Irák, and that of the followers of tradition, who were natives of Hijáz. As the people of 'Irák possessed but few traditions, they had recourse to analogical deductions, and attained great proficiency therein, for which reason they were called 'the followers of private judgment': the Imám Abú Hanífah, who was their chief, and had acquired a perfect knowledge of this system, taught it to his disciples. The people of Hijáz had for Imám, Málik Ben Anas, and then Ash-Sháfi'í. Some time after, a portion of learned men disapproved of analogical deductions, and rejected that mode of proceeding: these were the Záhirites (followers of Abú Dáwúd Sulaimán), and they laid it down as a principle, that all points of law should be taken from the Nusús (text of the Kurán and traditions), and the Ijmá' (universal accord of the ancient Imáms)."[2]

The respective weight allowed to the Kiyás by Málik, Ash-Sháfi'í, and Ibn Hanbal, is not easily to be ascertained, nor is it important in the present view of the question: their disciples were, however, termed "the followers of tradition" (Ahl as-Sunnat), in contradistinction to those of Abú Hanífah; and Abú 'l-Faraj says that these three doctors seldom resorted to analogical argument, whether manifest or recondite, when they could apply either a positive rule or a tradition. He adds that Abú Dáwúd Sulaimán rejected the exercise of reason altogether.[3]

[1] Ibn Khall. Vol. I. Introduction, p. xxvi. note.

[2] Quoted in the Introduction to M. De Slane's Ibn Khallkan, Vol. I. p. xxvi. note.

[3] Quoted in Pococke, Specimen Historiæ Arabum, p. 26.

Of all the Sunní sectarians, those who adhere to the doctrines taught by Abú Hanífah, as being the most numerous in India, claim our almost undivided attention. That jurisconsult himself, according to Abú al-Faraj, was so much inclined to the exercise of reason, that he frequently preferred it, in manifest cases, to traditions of single authority;[1] and his disciples in India have constantly upheld the exercise of the Kiyás in an extended form, as is sufficiently notorious, and amply proved by certain passages relating to the guidance of Magistrates quoted in the Fatáwa al-'Álamgírí. The first passage alluded is from the Muhít of Rází ad-Dín Níshápúrí, and is as follows:—"If the concurrent opinion of the companions be not found in any case which their contemporaries may have agreed upon, the Kází must be guided by the latter. Should there be a difference of opinion between the contemporaries, let the Kází compare their arguments, and adopt the judgment he deems preferable. If, however, none of the authorities referred to be forthcoming, and the Kází be a person capable of disquisition (Ijtihád), he may consider in his own mind what is consonant to the principles of right and justice, and, applying the result with a pure intention to the facts and circumstances of the case, let him pass judgment accordingly." The second is taken from the Badáï' of Abú Bakr Ben Mas'úd al-Káshání, who died in A. H. 587 (A.D. 1191):[2]—"When there is neither written law, nor concurrence of opinions, for the guidance of the Kází, if he be capable of legal disquisition, and have formed a decisive judgment on the case, he should carry such judgment into effect by his sentence, although other scientific lawyers may differ in opinion from him; for that which, upon deliberate investigation, appears to be right and just, is accepted as such in the sight of God." And again, a third passage is quoted from the last-

[1] Pococke, Specimen Historiæ Arabum, p. 26.
[2] Háj. Khalf. Tom. II. p. 235.

mentioned work:—"If in any case the Kází be perplexed by opposite proofs, let him reflect upon the case, and determine as he shall judge right; or, for greater certainty, let him consult other able lawyers; and if they differ, after weighing the arguments, let him decide as appears just. Let him not fear or hesitate to act upon the result of his judgment, after a full and deliberate examination." Passages from other law-books to the same effect are also quoted in the Fatáwa al-'Álamgírí, and the compilers of the latter work concur entirely in the opinions which they cite. In all such cases, however, it is pre-supposed that the Magistrate so exercising his private judgment, should possess the qualifications of a Mujtahid of the third class.

I have not been able to ascertain whether or not the Shí'ahs classed their Mujtahids according to the degree they had attained in Ijtihád, as with the Sunnís; but in former times the title seems to have implied in its possessor infallibility, both in doctrine and in conduct.[1] The Shí'ahs speak frequently of the Mujtahids in their legal works, saying generally, after the statement of some proposition where there is a difference of opinion, "Some of the Mujtahids say, &c." In Persia the title of Mujtahid exists at the present day, and is assumed by the chief priests and jurisconsults, who are elected to the dignity by the suffrage of the inhabitants of the provinces in which they live, and as such they exercise a great controul over the Law Courts, and are even superior in authority to the Judges themselves.[2]

(c) On the Muhammadan Law-Books.

It was not until a considerable time after the foundation of Islám that the traditions and interpretations of the law were reduced to writing; the Hadís for a long while remaining

[1] De Sacy, Chrestomathie Arabe, Tome I. p. 171.

[2] Malcolm's History of Persia. Vol. II. p. 442, *et seq.* Ibn Khall. Vol. I. Introduction, p. xxvi. note.

unwritten, or at least unpublished; the writers, as I have said above, expunging their works when they had learned them by heart. "The articles of law," says Ibn Khaldún,[1] "or, in other terms, the commandments and prohibitions of God, were then borne (not in books), but in the hearts of men, who knew that these maxims drew their origin from the Book of God, and from the practice (Sunnah) of the Prophet himself. The people at that time consisted of Arabs, wholly ignorant of the mode by which learning is taught, of the art of composing works, and of the means by which knowledge is enregistered; for to these points they had not hitherto directed their attention. Under the Companions of Muhammad, and their immediate successors, things continued in the same state; and during that period, the designation of Kurrá (readers) was applied to those who, being not totally devoid of learning, knew by heart and communicated information. Such were the persons who could repeat the Kurán, relate the sayings of the Prophet, and cite the example of his conduct in different circumstances. (This was a necessary duty), inasmuch as the articles of the law could only be known from the Kurán, and from the traditions which serve to explain it." Learned doctors even presided over schools of law, delivered lectures, and actually composed works which were not committed to writing.

It is not possible to fix with exactitude when the first collections of traditions were written down, but the practice of transcribing them appears to have increased gradually, and it is certain that several of the Companions of the Prophet collected his sayings in books.[2] Meanwhile the traditions increased to such an extent, that it became not only advisable, but necessary, to make general collections of them, and

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[1] Quoted by De Slane in his Introduction to Ibn Khallikan, Vol. II. p. v.

[2] Sprenger on the origin and progress of writing down historical facts, p. 15. Journ. As. Soc. of Bengal, Vol. XXV. p. 317.

to separate those which were authentic from those of doubtful authority.

The Khalífah 'Umar Ben 'Abd al-'Azíz issued a circular order for this purpose, and collections were rapidly formed, so that toward the end of the third century of the Hijrah, all the traditions that were at all to be relied upon had been collected in books: most of these it is certain had received a stereotype form previous to the beginning of the second century.[1] It is doubtful who was the first of the general collectors, but there is no question that the earliest of the general collections were compiled by Abú Bakr Ben Shiháb az-Zuhrí; 'Abd al-Malik Ben Juraij; Málik Ben Anas, and Ar-Rabí' Ben Subaih. I shall return to their works hereafter. Contemporary with these, or soon after, more particularly between the years 140 and 150 of the Hijrah, other learned men compiled and arranged collections of the traditions, and composed divers commentaries and treatises on jurisprudence, and the interpretation of the Kurán in regard to legal matters.

In process of time, works on these subjects became accumulated to an almost incredible extent; so that the bare enumeration of their titles would fill an ordinary volume;[2] and a reference to the biographical works of Ibn Khallikán[3] and

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[1] Sprenger's Mohammad. Vol. I. p. 68.

[2] In illustration of the numbers of such works Dr. Sprenger relates, "So extensive was Arabic literature, consisting chiefly of books containing traditions, in the beginning of the third century, that Wákidí, who died in A.H. 207 (A.D. 822) left a collection of books, which it took twelve hundred men to remove." Sprenger's Mohammad. Vol. I. p. 68.

[3] M. De Slane, whose translation of Ibn Khallikan I have already mentioned, is now employed in editing the text of that author's great work: the first Volume has already appeared, and is entitled, ابجز الاول من كتاب وفيات الاعيان و انبآء ابنآء الزمان مماثست بالنقل او السماع او اثبته العيان لابن خلكان Kitab Wafayat al-Aiyan. Vies des hommes illustres de l'Islamisme en Arabe, par Ibn Khalikan, publiées par le Baron M'Guckin De Slane. Tome I. 4to. Paris, 1842.

An-Nawawí, or the Bibliographical Dictionary of Hájí Khalfah,[1] will shew the name of a traditionist or writer on jurisprudence, or the title of a legal work, on almost every page. I shall refer more particularly to these collections of traditions hereafter.

The biographical and bibliographical dictionaries, which are very numerous, are of the greatest service in guiding the researches of the student into the legal literature of the Musulmáns. In addition to the general dictionaries of authors, and their works, there are many biographical collections especially devoted to the lives of celebrated doctors of laws,[2] under the title of Tabakát al-Fukahá, and there are a variety of similar compositions which are otherwise designated. The most celebrated of the Tabakát al-Fukahá was composed by Abú Ishak ash-Shírází,[3] who died in A. H. 476 (A. D. 1083). A modern history of jurisprudence, or rather of jurists, has been compiled in Hindí, from the works of Ibn Khallikán and As-Suyútí, by Maulaví Subhán Bakhsh, and was published at Dihlí in the year 1848.[4]

Special biographical treatises have also been written, recording the histories of learned doctors of each particular sect. Among the Sunnís, the most remarkable works which give an account of the Hanafí lawyers are the Jawáhir al-Muzíyat fí

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[1] The text of the Kashf az-Zunún of Hájí Khalfah is in the course of being edited, together with a Latin translation by Professor Fluegel. Six 4to. volumes have been published. Printed for the Oriental Translation Fund in 1835—52. It is to this edition that I have made reference in the notes.

[2] Háj. Khalf. Tom. IV: pp. 139 *et seq.*, and 149.

[3] Ibn Khall. Vol. I. p. 9. Háj. Khalf. Tom. IV. p. 149. An-Nawawí, p. ٦٤٦

[4] ترجمه تاريخ الحكماء اور تذكره المفسّرين مولفه علامه عبدالرّحمن جلال الدّين سيوطي اور تذكره الفقها خلاصه وفيات الاعيان ابن خلّكان كا مولوي سبحان بخش Biographical History of Mohummadan Jurisprudence, the Theology and Philosophy compiled from Ibn Khallikan Kifty, and Soyuty's Mofassiryn by Moulvee Subhan Bukhsh. Fol. Dehli, 1848. (Lithographed).

Tabakát al-Hanafíyat,[1] by the Shaikh Muhí ad-Dín 'Abd al-Kádir Ben Abí al-Wafá al-Misrí, who died in A. H. 775 (A. D. 1373), and the Tabakát as-Saníyat fí Tarájim al-Hanafíyat,[2] by Takí ad-Dín Tamímí, who died in A. H. 1005 (A. D. 1596); in both of which works the lives are arranged in alphabetical order. The chief biographer of the Málikí lawyers was Burhán ad-Dín Ibrahím Ben 'Alí Ben Farhún, who died in A. H. 799 (A. D. 1396): his work is entitled the Díbáj al-Muzahhib.[3] There are numerous biographical collections treating of the lives of the principal followers of Ash-Sháfi'í, several of which are entitled Tabakát ash-Sháfi'íyat: the most noted is by Táj ad-Din 'Abd al-Wahháb Ben as-Subkí, who died in A. H. 771 (A. D. 1369).[4] The Tabakát al-Hanbalíyat comprises the lives of the most famous doctors of the sect of Ibn Hanbal: it was commenced by the Kází Abú al-Husain Ben Abú Ya'li al-Farrá, continued by the Shaikh Zain ad-Dín 'Abd ar-Rahman Ben Ahmad, commonly called Ibn Rajab, and concluded by Yúsuf Ben Hasan al-Mukaddasí: these three writers died respectively in A. H. 526, 795, and 871 (A. D. 1131, 1392, and 1466).[5]

The followers of 'Alí were not idle in compiling bibliographical and biographical dictionaries, although their works of this nature are less numerous and less known, than those of the Sunnís.

The Shí'ahs have four celebrated works on their own bibliography. The earliest we possess, is that of the Shaikh Abú Ja'far Muhammad Ben al-Hasan Ben 'Alí at-Túsí, who was one of the chief Mujtahids of the Imámíyah sect, and died in A. H. 460 (A. D. 1067): it is entitled Fihrist Kutb ash-Shí'ah wa Asmá al-Musanniffn. This book superseded all earlier works of the kind, such as that of Ibn Nuhaik, of Ahmad Ben al-Husain, of Ahmad Ben Muhammad, and even

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[1] Háj. Khalf. Tom. II. p. 648.
[2] Háj. Khalf. Tom. IV. p. 139.
[3] Háj. Khalf. Tom. III. p. 240.
[4] Háj. Khalf. Tom. IV. p. 139.
[5] Háj Khalf. Tom. IV. p. 135.

that of the great Ibn Bábawaih. They are probably no longer extant. An edition of the text of At-Túsí's work has been edited by Dr. Sprenger, assisted by Maulaví 'Abd al-Hakk and Maulaví Ghulám Kádir, and recently published at Calcutta.[1]

The second is the Asmá ar-Rijál, which is generally quoted as the Kitáb-i Rijál by Shí'ah writers: it was written by Abú al-Hunain Ahmad Ben 'Alí an-Najashí, who died in A. H. 450 (A. D. 1058). This work is of great celebrity, and Dr. Sprenger informs us that though professing to be an independent composition, it is in fact merely a new edition of the Fihrist of at-Túsí, though more complete and generally more correct; in fact a better book.[2] It is constantly quoted by the Shí'ah authors.

The third work is entitled Ma'álim al-'Ulamá fí Fihrist Kutb: the author Rashíd ad-Dín Muhammad Ben 'Alí Ben Shahrásúb of Sárí in Mázandarán, died at an advanced age in A. H. 588 (A. D. 1192). It is a supplement to at-Túsí's Fihrist.[3]

The fourth book, and which, according to Dr. Sprenger, is much more useful than the one last named,[4] is the Amal al-'Amal fí 'Ulamá Jabal 'Ámil compiled in A. H. 1097 (A. D. 1685), by Muhammad Ben Hasan 'Ámilí. The first chapter contains an account of the learned men of Mount 'Amil, and the second chapter is devoted to learned Shí'ahs who lived after at-Túsí. I have never met with this book, which must be of extreme rarity as Dr. Sprenger says, he only found one copy of it available in India.[5]

The great biographical work of Núr Allah Ben Sharíf al-Husainí ash-Shústarí, entitled the Majális al-Múminín, is a mine

[1] Túsy's List of Shy'ah books, and 'Alam al-Hodá's notes on Shy'ah biography. Edited by Dr. A. Sprenger, Mawlawy 'Abd al-Haqq and Mawlawy Gholam Qadir. 8vo. Calcutta, 1855.

[2] Ib. Preface, pp. 1, 2. [3] Ib. Preface, p. 2. [4] Ib. Preface, p. 2.

[5] Ib. Preface, p. 2.

of valuable information respecting the most notable persons who professed the Shí'ah faith. The author has given an entire book or section (the fifth Majlis) to the lives of the traditionists and lawyers, and he has specified the principal works composed by each learned doctor at the end of their respective histories. Núr Allah does not mention the period when he wrote the Majális al-Múminín, nor have I been able to ascertain when he died. The fact, however, of his not giving the life of the celebrated lawyer Bahá ad-Din al-'Ámilí, who died in A.H. 1031 (A.D. 1621), whilst the latest lawyer named in his collection is stated to have died in A.H. 996 (A.D. 1587), fixes the composition of this section in the early part of the eleventh century of the Hijrah. It is from this work and the dictionaries of At-Túsí and An-Najáshí, that I have principally derived the account of the Shí'ah law books and their authors which will be found in the following pages.

Núr Allah constantly quotes the Fihrist of At-Túsí and the work of An-Najáshí above mentioned, and makes also frequent reference to a biographical treatise by the famous Shaikh al-'Allámah Jamál ad-Dín Hasan Ben Yúsuf al-Mutahhar Hillí, commonly known as Shaikh 'Allámah Hillí, who died in A.H. 726 (A.D. 1325). This treatise is called the Khulásat al-Akwál. Dr. Sprenger states that Ibn al-Mutahhar Hillí, compiled under the title of Ízáh a small but valuable supplement to works on Shí'ah biography, in which the orthography of proper names is fixed, and mistakes corrected. He also mentions that 'Alam al-Hudá made in A.H. 1073 (A.D. 1662), a new edition of the Ízáh, and he has printed the text of this work, at the bottom of the pages of his edition of the Fihrist of at-Túsí.[1] Núr Allah likewise quotes Abú Yahya Ahmad Ben Dáwúd al-Fazárí al-Jurjání, who was originally a Sunní, but became a convert to the Imámiyah faith, as the author of a biographical work called Kitáb fí Ma'rifat ar-Rijal.[2]

[1] See notes, *supra*, p. 262. [2] Majális al-Múminín.

It will be readily conceived, from the details above given, that any attempt to give even a tolerably complete list of the Muhammadan law-books would far exceed the limits of this treatise. I have endeavoured, however, in the following pages, to make such a selection from the mass as may prove useful to the student, and to enumerate and describe all such as have been printed, as well as some of the works still in MS., which are of chief authority amongst the different sects, and more especially those which are in the greatest repute, and most frequently referred to in India. I may add, that I have examined the originals of the works described, whenever they were procurable; and that, where the works themselves were not to be met with, I have invariably derived my information from the native authorities, with the exception, however, of a few instances, when other sources will be found indicated in the notes.[1]

Al 'Ulúm ash-Shar'íyat, one of the great classes into which the Muhammadan encyclopædists divide the whole circle of the sciences,[2] comprehends all those which have relation to religion and law, which are divided into seven sections:—1. 'Ilm al-Karát, the Science of Reading the Kurán; 2. 'Ilm at-Tafsír, the Science of the Interpretation of the Kurán; 3.

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[1] I take this opportunity of returning my sincerest thanks to Professor Horace Wilson, for his liberality in granting me unreserved access to the library of the Honourable East-India Company; also to Nathaniel Bland, Esq. and the Rev. George Hunt, for the loan of several valuable and interesting MS. works on Muhammadan law from their private collections.

[2] These classes will be found detailed by Hájí Khalfah in the Introduction to the Kashf az-Zunún, Tom. I. p. 24 *et seq.*, and in the avant-propos to Zenker's Bibliotheca Orientalis, p. xviii. *et seq.*, 8vo. Leipzig, 1846. The whole system of the Muhammadan encyclopædists is also admirably displayed by the late learned and venerable Baron Hammer-Purgstall, in his Encyklopädische Uebersicht der Wissenschaften des Orients. 8vo. Leipzig, 1804. A short Treatise, or Survey of the Sciences, entitled Irshád al-Kásid ila Asma al-Mukásid, by the Shaikh Shams ad-Dín Muhammad Ben Ibráhím Ben Sá'id Ansárí Akfáni Sakháwí, who died in A.H. 749 (A D. 1348), is also worthy of notice. The text of this work was edited by Dr. Sprenger, and published at Calcutta in the year 1849.

'Ilm al-Hadís, the Science of the Traditions; 4. 'Ilm ad-Diráyat al-Hadís, the Science of Critical Discrimination in matters of Tradition; 5. 'Ilm Usúl ad-Dín, or 'Ilm al-Kalám, the Science of Scholastic Theology; 6. 'Ilm Usúl al-Fikh, the Science of the Elements or Principles of Jurisprudence; 7. 'Ilm al-Fikh, the Science of Practical Jurisprudence. These sections are again subdivided into a multitude of inferior classes.[1]

It will not be necessary, in this Treatise, to enter more fully into the distinction, distribution, and definition of the 'Ilms, or sciences, connected with religion and law, under which the Muhammadan legal writings might be ranged in the order of their subjects, as I have adopted an arbitrary classification, comprising five great divisions under which the law-books of the Musulmáns, so far as they apply in India, seem naturally to fall.

These are—

I. The Kurán itself, and the Tafsírs or Commentaries which serve to interpret and illustrate the difficult passages, and to expound the meaning of the sacred text.

II. The works which treat of Traditions, and the Commentaries thereon.

III. The general Treatises on the fundamental principles of law, spiritual and temporal, and practical jurisprudence, together with the Digests of general or special law, and their Commentaries.

IV. The separate Treatises on the law of inheritance, or 'Ilm al-Faráïz, a branch of the 'Ilm al-Fikh, which exist in considerable numbers, although the subject is almost always included in the general treatises.

V. The books of decisions, comprehended by the Muhammadan lawyers under the 'Ilm al-Fatáwa, or Science of Decisions, which is also a branch of the 'Ilm al-Fikh: these con-

[1] Hammer-Purgstall, op. cit. p. 568 *et seq.* Mirza Kásim Beg has given a somewhat different arrangement of the divisions of the 'Ulúm ash-Shar'íyat. See Journal Asiatique, 4me Série, Tome xv. p. 159.

sist simply of the recital of the decisions of eminent lawyers in particular cases, and form a body of precedent, having various authority, and serving for the guidance of lawyers in subsequent decisions, much in the same manner as our Reports of decided cases in England.

A sixth class may be now added to the books on Muhammadan law having authority in India. I allude to the original works on the subject by European authors, which will be severally noticed after the native treatises.

It is advisable to treat separately of those works which are of authority respectively amongst the Sunnís and Shí'ahs, inasmuch as they are never interchangeable; with the exceptions, however, already noticed, that the Kurán itself is of paramount authority with both sects, and that the Shí'ahs receive such traditions of the Sunnís as are proved by their Isnáds to have been transmitted through, or verified by, the descendants, friends, or partisans of 'Alí Ben Abí Tálib.

It is not an easy matter to obtain information respecting the Shí'ah authorities of law, since that sect contributed but little to the literature of Arabia, more especially in the earlier ages of Islám, when law was regarded as the chief and most worthy of the sciences. But though the Shí'ah writers on tradition and law are few in number when compared to those of the Sunní sects, yet some of the very greatest names in Oriental literature appear in the list; and the illustrious Jámí the poet, Al-Mas'údí the historian, and Husain Wá'iz Káshifí the moralist, are numbered in the ranks of Shí'ah lawyers and divines.

I. The Kurán is believed by all orthodox Musulmáns to be uncreated and eternal, subsisting in the very essence of God,[1]

[1] This is the orthodox belief, but the Mu'tazilís and some other sects deny the eternity of the Kurán. (Poc. Spec. p. 220.) Al-Ghazálí reconciles both opinions, saying that "the Kurán is read and pronounced with the tongue, written in books, and kept in memory; and is yet eternal, subsisting in God's essence, and not possible to be separated thence by any

and revealed to Muhammad by the angel Gabriel, at different times during a space of twenty-three years. Wherever its texts are applicable, and not subsequently abrogated by others, they are held to be unquestionable and decisive, as the word of God transmitted to man by the last, or, as he is emphatically called, the Seal of the Prophets, Muhammad the messenger of God.

The Kurán, as we now possess it, originated after the Prophet's death, when the revelations left by him, existing either in manuscript or preserved in the memory of his companions, were digested and put in order by his successor Abú Bakr. This Digest, when transcribed and arranged, was placed in the hands of 'Umar's daughter, Hafsah, who was one of the Prophet's widows.

In the 30th year of the Hijrah the Khalífah 'Usmán, finding great discrepancies in the copies of the Kurán, which were spread abroad in the different provinces, caused a number of transcripts to be made, under the inspection of four supervisors, from the copy in the possession of Hafsah; and these transcripts were dispersed throughout the empire, whilst all those previously extant were suppressed and destroyed.

Thus arose the present text of the Kurán, which is considered as authentic, though some few various readings still occur, proceeding, for the most part, from the omission of the vowel-points, which were not supplied in the earlier copies. The text of the Kurán has been so often printed, that to specify the editions would be supererogatory.

The first interpreters of the text of the Kurán were the Companions of the Prophet; and it may be imagined that the subtle-minded Musulmáns soon flocked in numbers to undertake the sacred and delicate task of interpreting and explaining the holy text, upon which their entire rule of conduct in this

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transmission into men's memories or the leaves of books." Sale's Prel. Disc. Sect. iii. And see Poc Spec. p. 222 *et seq.*, and Ibn Khall. Vol. III. p. 339, n. 8.

world, and hope of salvation in the next, were believed to depend. The commentaries on the Kurán are accordingly almost countless, and are divided into classes according to their mode of treating the subject, but which it will not be necessary here to dwell upon. One or two Commentaries having the greatest authority may be noticed.

The historian Abú Ja'far Muhammad Ben Jarír at-Tabarí, who died in A.H. 310 (A.D. 922), wrote a Commentary, which has great reputation, and is mentioned in terms of high praise, both by As-Suyútí and An-Nawawí.[1] The most famous of all the Commentaries amongst the Sunnís are, however, the Kashsháf[2] and the Anwár at-Tanzíl.[3] The former is by Abú al-Kásim Jár Allah Mahmúd Ben 'Umar az-Zamakhsharí, who died in A.H. 538 (A.D. 1143);[4] and the latter by Násir ad-Dín 'Abd Allah Ben 'Umar al-Baizáwí, who died at Tabríz in A.H. 685 (A.D. 1286):[5] he is said to have made great use of the work of Az-Zamakhsharí. Both these works are of almost universal authority amongst the Sunnís.

Extracts from these commentaries were published in the original Arabic, with a French translation by De Sacy, in the year 1829.[6] Dr. Fleischer is at present engaged in printing the text of Al-Baizáwí's work.[7]

The Tafsír al-Ghazálí, as it is generally called, but which is entitled the Yákút at-Táwíl by its author, Abú Hámid Muhammad al-Ghazálí, who died in A.H. 504 (A.D. 1110),[8] and

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[1] Háj. Khalf. Tom. II., p. 346. An-Nawawi, p. 171.

[2] Háj. Khalf. Tom. IV., p. 179. Hájí Khalfah gives a long account of this celebrated Tafsír.

[3] The Anwár at-Tanzíl is sometimes designated the Tafsír al-Kází.

[4] De Sacy, Anthologie Grammaticale Arabe, p. 269. Ibn Khall. Vol. III. p. 329.

[5] De Sacy, Anthol. Gram. Arabe, p. 37. Háj. Khalf. Tom. I, p. 469.

[6] De Sacy, Anthol. Gram. Arabe, p. 1 *et seq.* p. 281 *et seq.*

[7] Beidhawii Commentarius in Coranum, edidit, indicibusque illustravit H. O. Fleischer. Leipzig. 4to.

[8] De Sacy, Chrest. Arabe, Tome II. p. 505.

the Durr al Mansúr of Jalál ad-Dín 'Abd ar-Rahman Ben Abí Bakr as-Suyútí, who died in A.H. 911 (A.D. 1505), are also commentaries on the Kurán of established reputation among the Sunnís. The latter work is founded upon the traditions.[1]

The Tafsír al-Jalálain, which is a concise but good commentary on the Kurán, is the joint work of Jalál ad-Dín Muhammad Ben Ahmad al-Mahallí, who died in A.H. 864 (A.D. 1459), and the celebrated Jalál ad-Dín as-Suyútí.[2] It has been printed at Calcutta.[3]

A treatise on the science of commentating on the Kurán, entitled the Fâuz al-Kabír fí Usúl at-Tafsír, by Mullá Sháh Walí Allah Muhaddis Dihlawí, was printed at Dihlí in 1842.[4]

A Persian commentary on the Kurán, entitled Tafsír Fath al-'Azíz, was printed at Calcutta, in the year 1843. It is by Sháh 'Abd al-'Azíz Dihlawí.[5]

The Tafsírát al-Ahmadíyat is a commentary on the Kurán of some extent, composed in the reign of the Emperor Aurangzéb 'Álamgír, by Mulla Jain Júnfúrí. It was published at Calcutta, in the year 1847.[6]

A commentary on the Kurán, by Isma'íl Hákkí, entitled

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[1] Háj. Khalf. Tom. II. p. 192.

[2] Háj. Khalf. Tom. II. p. 358.

[3] تفسير الجلالين 4to. Calcutta, A.H. 1256 (A.D. 1840).

[4] فوزالكبير في اصول التّفسير از تصنيفات مولانا شاه ولي اللّه محدّث دهلوي 8vo. Dihlí, A.H. 1258 (A.D. 1842.)

[5] تفسير فتح العزيز تصنيف شاه عبد العزيز دهلوي 4to. Calcutta, A.H. 1259 (A.D. 1843).

[6] تفسرات الاحمدية في بيان الآيات الشرعية مع تفريعات المسائل الفقهية قد جمعها ملا احمد الشهير ملا جين جونفوري 4to. Calcutta, A.H. 1263 (A.D. 1847).

Rúh al-Bayán, was published at Búlák in the year 1840.[1] I have not seen this work.

One of the earliest of the many writers of commentaries on the Kurán among the Shí'ahs is Abú Ja'far Muhammad Ben 'Alí Ben Bábawaih, surnamed As-Sadúk, who lived in the fourth century of the Hijrah, and was a contemporary of Rukn ad-Daulah Dílamí. He was one of the greatest of the collectors of Shí'ah traditions, and the most celebrated of all the Imámíyah lawyers of Kum. This writer composed a large and a small Tafsír. There is considerable uncertainty as to the exact time when he lived; Shaikh Túsí says, in the Fihrist, that Abú Ja'far died at Ray, in A.H. 331 (A.D. 942), but this appears to be erroneous. Shaikh Najáshí, who died in A.H. 450 (A.D. 1058), states that Abú Ja'far visited Baghdád, whilst yet in the prime of life, in A.H. 355 (A.D. 965), which might well have been the case, since Abú al-Hasan 'Alí Ben Bábawaih, the father of Abú Ja'far, did not die until A.H. 329 (A.D. 940).[2] In addition to this, and which confirms the opinion that Shaikh Túsí is in error, Núr Allah relates, on the authority of the Shaikh ad-Dúryastí (or Dúrbastí) ar-Rází,[3] that Abú Ja'far lived in the time of Rukn ad-Daulah Dílamí, and had repeated interviews with that Prince, who, as is well known, reigned from A.H. 338 to A.H. 366 (A.D. 949—976).

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[1] روح البيان في تفسير القران Búlák, A.H. 1256 (A.D. 1840).

[2] Majális al-Muminín.

[3] There are three several eminent Shí'ah doctors who are so called; viz. the Khájah Ja'far Ben Muhammad, and his two sons, 'Abd Allah Ben Ja'far and Hasan Ben Ja'far, the second of whom is stated to have visited Baghdád in A.H. 566 (A.D. 1170), and to have returned to his native place, where he died about A.H. 600 (A.D. 1203). There is some doubt as to the reading of the word Dúrbastí, or Dúryastí. In the geographical portion of the Majális al-Múminín, I find that Dúrbast, or Dúryast is described as a village near Ray, which is now called Darasht. This statement is made on the authority of the Mu'jam al-Buldán.

A very extensive comment on the Kurán, in twenty volumes, also proceeded from the pen of Abú Ja'far at-Túsí, already spoken of as the writer of a dictionary of Shí'ah books and authors. This comment is generally called the Tafsír at-Túsí, but it was entitled by its author the Mujmi' al-Bayán li 'Ulúm al-Kurán.[1]

Abú al-Fatúh Rází, the author of the Kitáb-i Hasaníyah, already mentioned, devoted the same number of volumes to a similar work, and likewise composed a Persian Tafsír in four volumes.

The great poet Núr ad-Din 'Abd ar-Rahman Jámí, who died in A.H. 898 (A.D. 1492),[2] is also the author of a Tafsír of some note. But the most celebrated of all the Shí'ah commentaries on the Kurán is that by the famous moral writer Kamál ad-Dín Husain al-Wá'iz al-Káshifí as-Sabzawárí, the well-known author of the Anwár-i Suhailí and the Akhlak-i Muhsinín, who died about A.H. 910 (A.D. 1504), and who entitled his work the Mawáhib al-'Alíyat:[3] it is, however, generally known as the Tafsír-i Husainí. The Tafsír-i Husainí is now in course of publication, in lithography, at Calcutta. It is accompanied by the Arabic text of the Kurán, with an interlinear Hindí translation, and another Persian comment entitled the Tafsír-i 'Abbásí: two volumes of this edition have already appeared.[4]

II. The first general collections of traditions said to have been written are, as I have already stated, those of Abú Bakr Ben Shiháb az-Zuhrí; 'Abd al-Malik Ben Juraij; Málik Ben Anas, the founder of the second sect of Sunnís, in his work called the Muwatta; and Ar-Rabí' Ben Subaih. It is diffi-

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[1] Háj. Khalf. Tom. II. p. 369.

[2] Háj. Khalf. Tom. II. p. 357. [3] Háj. Khalf. Tom. II. p. 360.

[4] The Korán of Mohammad in the original Arabic, with two Persian comments, and an interlinear Hindee translation of the text, by Shah Abdool Kadir. 4to. Calcutta, 1837.

cult to ascertain which author is entitled to priority. Az-Zuhrí is considered to have been the first by As-Suyútí[1] and Al-Makrízí:[2] whilst others give the preference to the Muwatta,[3] or to the compilations of Ibn Juraij or of Ar-Rabí'. The preponderance seems, however, to be in favour of 'Abd al-Malik Ben Juraij.

Two others of the founders of the chief Sunní sects are mentioned as the authors of some of the earliest works on the traditions: Ash-Sháfi'í being reputed to have composed two collections, namely, the Masnad and the Sunan, and Ibn Hanbal to have compiled a work called the Masnad, containing a larger number of traditions than had been previously brought together.[4]

Whichever of the first four collections above mentioned may be entitled to precedence in point of time, the chief authorities in matters of tradition among the Sunnís are now the books which are known by the name of the Six Sahíhs, or Six Books of the Sunnah; whilst the Shí'ahs have their own four books of Hadís, which, though less generally known, are by them equally venerated, and esteemed above all others on the same subject.

The Six Sahíhs, or genuine collections of traditions, are the chief authorities, after the Kurán,[5] among the Sunnís; and as they serve to illustrate points of doctrine not clearly explained in that sacred work, they are by them considered as its indispensable supplement.

The first of these, which is the most celebrated, and held in the most general estimation by all the Sunní sects, is the Jámi' as-Sahíh, or, as it is sometimes called, the Sahíh al-Bukhárí,[6] from the surname of its author, Abú 'Abd Allah

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[1] Ibn Khall. Vol. I. Introduction, p. xviii.

[2] Quoted by M. Vincent in his Études sur la loi musulmane, p. 19.

[3] De Sacy, Chrest. Arabe. Tome I. p. 401.

[4] Ibn. Khall. Vol. I. p. 44.

[5] De Sacy, Chrest. Arabe. Tome I. p. 407.

[6] Mishcát ul Masábih. Tom. I. p. 3. De Sacy, Chrest. Arabe. Tome I. p. 408.

Muhammad Ben Isma'íl al-Bukhárí. It is generally considered to surpass the Sahíh of Muslim, the next in authority, although the two are reckoned to be only second in truthfulness to the Kurán itself. Al-Bukhárí, "the chief Imám in the science of traditions," was born at Bukhárá, from which city he took his surname, in A.H. 194 (A.D. 809), and died at the village of Khartank, in the district of Samarkand, in A.H. 256 (A.D. 869). He was a pupil of the Mujtahid Imám Ibn Hanbal. His compilation is stated to comprise upwards of seven thousand traditions, which he himself affirmed he had selected from a mass of six hundred thousand, after a labour of sixteen years.[1]

The Jámi' as-Sahíh, called by its author the Masnad as-Sahíh, but most generally known as the Sahíh Muslim, by Abú al-Husain Muslim Ben al-Hajáj Ben Muslim al-Kushairí, surnamed An-Níshápúrí, who was a pupil of Ibn Hanbal, is considered as almost of equal authority with the Sahíh al-Bukhárí, and indeed by some, especially by the African doctors, is preferred to that work.[2] The two collections are constantly quoted together under the name of the Sahíhain,

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[1] Háj. Khalf. Tom. II. p. 512 *et seq.* Hájí Khalfah gives a full account of this great work. And see Ibn Khall. Vol. II. p. 594; and An-Nawawí, p. ٨٦. A most interesting notice of the Sahíh al-Bukhárí, by Dr. Ludolf Krehl, appeared in the Zeitschrift der Deutschen Morgenländischen Gesellschaft. Band. IV. p. 1 *et seq.*

[2] Háj. Khalf. Tom. II. p. 513. De Sacy says, quoting Ibn Khaldún, "Les docteurs Africains se sont surtout attachés en fait de *hadíths*, ou traditions au recueil ou Sahih de Meslem, et d'un commun accord ils lui ont donné la préférence sur celui de Bokhari." (Chrest. Arabe, Tome II. p. 302.) Dr. Worms, however, states the contrary, and maintains the precedence of the Sahíh al-Bukhárí, saying of that collection, that, "elle marche en première ligne après le Koran; c'est sur le livre de Boukhari qu'en Afrique les juges musulmans font porter la main aux personnes dont ils exigent le serment."—(Journal Asiatique, 8me Série, Tome XIV. p. 239). This latter remark seems, however, to be restricted to the practice which obtains in Algeria, and perhaps even there may be a modern innovation.

or the two Sahíhs. Muslim is said to have composed his work from three hundred thousand traditions. He died at Níshápúr in A.H. 261 (A.D. 874), aged 55 years.[1]

The third collection of traditions in point of authority is the Jámi' wa al-'Ilal, by Abú 'Ísa Muhammad Ben 'Ísa at-Tirmizí: this work is more generally known by the name of the Jámi' at-Tirmizí, and is also called the Suman at-Tirmizí. At-Tirmizí was a pupil of Al-Bukhárí: he died in A.H. 279 (A.D. 892).[2]

Abú Dáwúd Sulaimán Ben al-Ash'as, surnamed As-Sajistání, wrote a Kitáb as-Sunan which contains four thousand eight hundred traditions selected from a collection made by him of five hundred thousand. It is considered as the fourth book of the Sunnah. Abú Dáwúd was born in A.H. 202 (A.D. 817), and died at Basrah in A.H. 275 (A.D. 888).[3]

Abú 'Abd ar-Rahman Ahmad Ben 'Alí Ben Shu'aib an-Nasáï compiled a large work on the traditions which he entitled the Suman al-Kabír; but as he himself acknowledged that many of the traditions which he had inserted, were of doubtful authority, he afterwards wrote an abridgment of his great work, omitting all those of questionable authenticity: and this abridgment, which he entitled Al-Mujtaba, takes its rank as one of the six books of the Sunnah. An-Nasáï was born at Nasá, a city in Khurásán, in A.H. 215 (A.D. 830), and died at Makkah in A.H. 303 (A.D. 915).[4]

The Kitáb as-Sunan by Abú 'Abd Allah Muhammad Ben Yazíd Ben Májah al-Kazwíní, is the sixth book of the Sunnah, and is commonly called the Sunan Ibn Májah. Ibn Májah

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[1] Ibn Khall. Vol. III. p. 356. Háj. Khalf. Tom. II. p. 542. An-Nawawí, p. ٥٢٥ *et seq.*

[2] Ibn Khall. Vol. II. p. 679. Háj. Khalf. Tom. II. p. 548.

[3] Ibn Khall. Vol. I. p. 589. Háj. Khalf. Tom. III. p. 622. An-Nawawí, p. ٧٠٨.

[4] Ibn Khall. Vol. I. p. 58. Háj. Khalf. Tom. III. p. 626.

was born in A.H. 209 (A.D. 824), and died in A.H. 273 (A.D. 886).[1]

These six books are generally known by the name of Al-Kutub as-Sittat fí al-Hadís,[2] or the six books on the traditions; but the first two, which are of by far the greatest authority, are, as we have already seen, denoted the Sahíhain, or the two authentic collections.[3] The remaining four are commonly called Al-Kutub al-Arba', or the four books. Traditions extracted from these six books are accordingly distinguished by authors who make use of them; those taken from the Sahíhain being called Sahíh, or authentic; whilst those from the four books are called Hasan, or delivered on respectable authority, having, however, greater weight than if they were derived from any other compilations on the Sunnah. Some authors arrange the six Sahíhs in a different order from that above given.

The style of these six great works is concise and elliptic, but they are generally considered as pure and elegant: they are not easily to be understood without the aid of commentaries; and accordingly a host of learned doctors have undertaken the task of expounding them. Hájí Khalfah enumerates upwards of eighty on the Sahíh al-Bukhárí alone.

In addition to the above-mentioned works, there are an immense number of collections of traditions, of greater or less extent, and which are of various authority, according to the reputation of their authors. Some of these are original; but

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[1] Ibn Khall. Vol. II. p. 680 Hâj. Khalf. Tom. III. p. 621.

[2] I have learned, from my friend Dr. Sprenger, that editions of Al-Bukhárí, At-Tirmizí, An-Nasái, and Abú Dáwúd, have been published in India during the last few years. The first is furnished with useful glosses, and is very correct. The Sahíh of At-Tirmizí is likewise very correct; but the text of the two latter authors is not so accurate. Dr. Sprenger also says he has heard that the Sahíh of Muslim is in course of publication at Calcutta. I have not seen any of these most important publications, and I believe that few, if any, of them have as yet reached this country.

[3] Mishcát ul-Masábih, Vol. I. p. ni. De Sacy Chrest. Arabe, Tome I. p. 408.

they consist, for the most part, of selections and epitomes, or condensed abridgments of one or more of the principal works, explaining in many instances the difficult words and passages, and illustrating the traditions severally by the opinions and decisions of jurisconsults. These exist in such numbers, that Hájí Khalfah himself, in that great monument of industry and research, the Kashf az-Zunún, admits that it would be impossible to enumerate them; it will therefore be sufficient to mention a very few of the most important and the more recent.

The Muwatta of Málik Ben Anas, already mentioned, and a collection of traditions called after the name of its author, Abú Muhammad 'Abd Alláh ad-Dárimí, who died in A.H. 255 (A.D. 868),[1] are by some considered to be respectively entitled to be placed among the six Sahíhs, in the place of the Sunan of Ibn Májah. At any rate the Muwatta is always looked upon as the next in point of authority to the six Sahíhs.[2]

The collections of Abú al-Husain 'Alí Ben 'Umar ad-Dárakutní who died in A.H. 385 (A.D. 995),[3] and of Abú Bakr Ahmad Ben al-Husain al-Baihakí, who died in A.H. 458 (A.D. 1065),[4] are also of the highest authority.

One of the most celebrated compilations after the Six Sahíhs, is the Masábíh as-Sunnat by Abú Muhammad Husain Ben Mas'úd al-Farrá al-Baghawí,[5] who died in A.H. 516 (A.D. 1122).[6] This work is principally extracted from

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[1] Haj. Khalf. Tom. III. p. 628.

[2] See the Mishcát ul-Masábih, p. iii. M. Vincent places the Muwatta amongst the six Sahíhs, without noticing its doubtful title to that position. Études sur la loi musulmane, p. 31.

[3] Háj. Khalf. Tom. III. p. 628. [4] Háj. Khalf. Tom. III. p. 627.

[5] Matthews calls him Al-Baghdádí, but erroneously. Mishcát ul-Masábih, Vol. I. p. ii. This surname is derived from Bagh or Baghshúr, the name of a town in Khurásán. Ibn Khall. Vol. I. p. 420. Háj. Khalf. Tom. V. p. 564.

[6] Ibn Khall. Vol. I. p. 419. Haj. Khalf. Tom. V. p. 564.

the Six Sahíhs, embodying all the authentic traditions, and omitting those which are in any way doubtful: the author, however, has neglected to insert the Isnáds. Al-Baghawí also wrote a Jam' bain al-Sahíhain, or Conjunction of the Two Sahíhs. A work, bearing the same title, by Abú 'Abd Allah Muhammad al-Humaidí, who died in A.H. 488 (A.D. 1095),[1] comprehends the collections of Al-Bukhárí and Muslim, and has a great reputation; as is also the case with the copious compilation of Abú al-Hasan Razín Ben Mu'awiyah al-'Abdarí, who died in A.H. 520 (A.D. 1126), which comprises the works of Al-Bukhárí and Muslim, the Muwatta of Málik, the Jámi' at-Tirmizí, and the Sunans of Abú Dáwúd, and An-Nasáï.[2]

Next may be noticed the Jámi' al-Jawámi'[3] of the celebrated doctor Jalál ad-Dín 'Abd ar-Rahman Ben Abí Bakr as-Suyútí. This author omits the Isnáds, but, by the use of abbreviations, designates those traditions which are extracted from the six books of the Sunnat. All the works of As-Suyútí are held in great estimation by the Sunnís. The Rev. Dr. Cureton long ago announced his intention of preparing for publication the text of the Jami' as-Saghír of As-Suyútí, which is an abridgment of the Jami' al-Jawámi', arranged in alphabetical order; it will be most acceptable to those Orientalists who wish to study this important and hitherto-neglected branch of Arabic literature.

A commentary on the Hadís al-Arba'ín of Shaikh Isma'il Hakkí, entitled the Sharh al-Arba'ín, or Hadís Arba'ín Sharhí, by Mulla 'Alí al-Háfiz al-Kastamúní, was printed and published at Constantinople in the year 1837.[4] Another work, entitled the Karak Suwál, containing forty questions by the Mullá Furatí, with the answers of Muhammad, according to

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[1] Haj. Khalf. Tom. II. p. 619.
[2] Haj. Khalf. Tom. III. p. 32.
[3] Haj. Khalf. Tom. II. p. 614.
[4] حديث اربعين شرحي, or شرح الاربعين 4to. Const. A.H. 1253 (A.D. 1837).

tradition, was also printed in the year 1840, at the same place.[1]

The Mishkát al-Masábíh is a new and augmented edition of the Masábíh of Al-Farrá al-Baghawí, by the Shaikh Walí ad-Dín Abú 'Abd Allah Muhammad Ben 'Abd Allah al-Khatíb, who completed his work in A.H. 737 (A.D. 1336). It is a concise collection of traditions, principally taken from the Six Books, and arranged in chapters according to subjects. This collection has been translated by Captain Matthews,[2] and is, I believe, the solitary work that has been as yet published in its entirety, in any European language, on the 'Ilm al-Hadís; a fact that is to be deeply regretted, when we consider how little the Muhammadan religion and laws are understood, and how greatly they depend upon the science of tradition.

A Persian translation and Commentary on the Mishkát al-Masábih, entitled the Ashi"at al-Lam'át fí Sharh al-Mishkát, by the Shaikh 'Abd al-Hakk Dihlawí, was published at Calcutta in 1842.[3]

A small work on traditions, entitled the Muntakhab-i Bulúgh al-Marám, which appears to be an abridgment, omitting the Isnáds, of the Bulúgh al-Marám of Shihab ad-Dín Abú al-Fazl Ahmad al-'Askalání, who died in A.H. 852 (A.D. 1448),[4] has been printed at Calcutta, with an interlinear Urdú translation.[5]

Another small collection, entitled Lubáb al-Akhbár, and

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[1] قرق سؤال 8vo. Const. A.H. 1256 (A.D. 1840).

[2] Mishcát ul-Masábih, or a collection of the most authentic traditions regarding the actions and sayings of Muhammad. Translated from the Arabic by Captain Matthews. 2 Vols. 4to. Calcutta, 1809—1810.

[3] اشعة اللمعات في شرح المشكوة تصنيف شيخ عبد الحق دهلوي 4to. Calcutta, A.H. 1258 (A.D. 1842).

[4] Haj. Khalf. Tom. II. p. 68.

[5] منتخب بلوغ المرام 8vo. Calcutta, N.D.

containing three hundred and ninety-five authentic traditions was published at the same place in the year 1837.[1]

The commentaries on the collections of traditions are not confined to the Six Sahíhs, all the more important compilations of this nature having received illustration from the writings of subsequent lawyers. The 'Ilm Sharh al-Hadís, or Science of Commentating the Traditions, is reckoned one of the subsidiary branches of the 'Ilm al-Hadís itself.

A short tract in Persian, by Mullá Háfiz Sháh 'Abd al-'Azíz, entitled Risálah-i Usúl-i Hadís, may here be mentioned. It is a sort of introduction to the study of the Sunnah, and was published at Calcutta in 1838.[2]

The 'Ilm al-Hadís has occupied the attention of a multitude of Shí'ah writers; and a glance at any of the biographical works of that sect is alone sufficient to refute the statement already mentioned, that the followers of 'Alí give no authority to the oral law.

One of the earliest writers, both on the Hadís and law of the Imámíyah sect, was 'Abd Allah Ben 'Alí Ben Abú Shu'bah al-Halabí, whose grandfather, Abú Shu'bah, is related to have collected traditions in the time of the Imáms Hasan and Husain. 'Abd Allah wrote down these traditions, and presented his work, when completed, to the Imám Ja'far as-Sádik, by whom it is said to have been verified and corrected. Abú Muhammad Hishám Ben al-Hákim al-Kindí ash-Shaibaní, who lived in the time of the Khalífah Hárún ar-Rashíd, and died in A.H. 179[3] (A.D. 795), is also famed as being one of the first compilers of Shí'ah traditions. He was one of the intimate friends of the Imám Músa al-Kásim.

Yúnas Ben 'Abd ar-Rahman al-Yuktainí was celebrated as a Shí'ah traditionist. Amongst other works, he wrote the

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[1] لباب الاخبار 8vo. Calcutta, A.H. 1253 (A.D. 1837).

[2] رساله اصول حديث 8vo. Calcutta, A.H. 1254 (A.D. 1838).

[3] An-Najáshí says he died in A.H. 199. See At-Túsí, p. ٣٥٥.

'Ilal al-Hadís and the Ikhtiláf al-Hadís. This author is said to have made forty-five Hajjs and fifty-four 'Umrats[1] to Makkah, and to have written the surprising number of one thousand volumes, controverting the opponents of the Shí'ah doctrines. He died at Madínah, in A.H. 208 (A.D. 823).

These are the earliest writers on the Shí'ah Hadís; but it is stated that the Shí'ahs in India consider four later works as the most authentic: these are called the Kutub-i Arba', and are, as it seems, held by them in the same estimation as the Six Sahíhs amongst the Sunnís.[2]

The first two in order of these four books are the Tahzíb al-Ahkám and the Istibsár. They were composed by the Shaikh Abú Ja'far at-Túsí, already mentioned as the author of the Fihrist, and of a voluminous commentary on the Kurán.

The third in order of the Kutub-i Arba' is the Jámi' al-Káfí by Abú Ja'far Muhammad Ben Ya'kúb al-Kalíní ar-Rází, who is called the Raïs al-Muhaddisín, or chief of the traditionists. This work is of the highest authority, both in India and Persia: it is of vast extent, comprising no less than thirty books: and its author is said to have employed twenty years it its composition. Al-Kalíní also wrote several other works of less note, and died at Baghdád, in A.H. 328 (A.D. 939).[3]

The fourth of the authentic books on Shí'ah traditions is the Man lá Yazarhu al-Fakíh, by the celebrated Abú Ja'far Muhammad Ben 'Alí Ben Bábawaih al-Kumí, already spoken of as the author of two Tafsírs on the Kurán. This collection

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[1] The difference between the Hajj and the 'Umrat is, that the former implies a pilgrimage to Makkah, with the performance of all the ceremonies, and the latter merely a visit to the sacred city.

[2] Har. Anal. p. 224, note. 2d edit. Harington only gives the titles of these books, and states their repute as authentic, on the authority of Maulaví Siráj ad-Dín 'Alí, one of the law officers of the Sudder Dewanny Adawlut.

[3] At-Túsí, p. ٣٣٦.

is of great note in Persia as well as in India. Ibn Bábawaih wrote many other works on tradition, the principal of which, according to Núr Allah, was the Kitáb al-Masábíh. The large number of one hundred and seventy-two works on Law and Hadís are mentioned, on the authority of An-Najáshí, to have been composed by this voluminous writer.

Abú al-'Abbás Ahmad Ben Muhammad, commonly called Ibn 'Ukdah, was one of the greatest masters of the science of traditions; and was renowned for his diligence in collecting them, and the long and frequent journeys which he undertook for the purpose of obtaining information on the subject. Ad-Dárakutní, the Sunní traditionist, is reported to have said that Ibn 'Ukdah knew three hundred thousand traditions of the Ahl-i Bait and the Benú Háshim. Ibn 'Ukdah died at Kúfa in A.H. 333 (A.D. 944).

'Alí Ben al-Husain al-Mas'údí al-Hudaili, the far-famed author of the Murúj az-Zahab, and who has been, with some justice, termed the Herodotus of the East, was also a writer on the Shí'ah traditions. He died in A.H. 346 (A.D. 957). Another name, scarcely less celebrated in the annals of Arabic literature, likewise appears amongst the writers on the same subject; viz. that of Abú al-Faraj 'Alí Ben al-Husain al-Isfahání, who is said to have devoted fifty years to the composition of the well-known Kitáb al-Aghání, and who died in A.H. 356 (A.D. 966). It is stated that Ad-Dárakutní, and others of the Sunní traditionists, drew largely for their materials from the writings of this last author.

The great Shí'ah lawyer, the Shaikh al-'Allámah al-Hillí, the author of the Khulásat al-Akwál, is also a very high authority on tradition. His chief works on the subject are the Istiksá al-I'tibár, the Masábíh al-Anwár, and the Durar wa al-Marján.

Last amongst the writers on the Shí'ah Hadís may be placed

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[1] At-Túsí, p. ٣٠٣.

Abú al-Futúh Rází and Muhammad Bákir Ben Muhammad Takí, whose works, the Kitáb-i Hasaníyah and the Hakk al-Yakín, already described, although in the main controversial, may yet seem properly to be included in the present class, from the number of traditions they comprise. The latter of these authors also composed a work treating exclusively of Hadís, and entitled the Bihár al-Anwár.

III. Having so far described the works on the traditions, it becomes necessary to give some notices of the general Digests and special Treatises, with their Commentaries, which, together, form the third class of law-books, according to the present arrangement, and treat more especially of practical jurisprudence in all its branches. These, as may be imagined, are exceedingly numerous; and it would be impossible, in this place, to give more than the following meagre selection.

The chief works that treat generally of the doctrines of the four principal sects of the Sunnís are mentioned by Hájí Khalfah to be the Jámi' al-Mazáhib, the Mujmi' al-Khiláfíyát, the Yanábi' al-Ahkám, the 'Uyún, and the Zubdat al-Ahkám.[1] The only one of these works of which I have been able to find a particular description is the Zubdat al-Ahkám, which expounds the practical statutes of the different doctrines of the four Sunní sects, and was written by Siráj ad-Dín Abú Hafs 'Umar al-Ghaznaví, a follower of Abú Hanífah, who died in A.H. 773 (A.D. 1371).[2]

I shall now mention separately the more important of the works of the most celebrated lawyers of each particular sect, since though all the four Sunní sects receive in common the Six Sahíhs, and other collections of their traditions, with a slight preference given by some sects to particular books, it is by no means the case with the law-books of the third class, each sect holding separate doctrines, and referring to distinct authorities. In the enumeration of these works I shall dwell

[1] Háj. Khalf. Tom. IV. p. 457. [2] Háj. Khalf. Tom. III. p. 533.

more especially upon those which follow the doctrine of Abú Hanífah, the prevailing Sunní sect in India.

Abú Hanífah's principal work is entitled the Fikh al-Akbar: it treats of the 'Ilm al-Kalám, and has been commented upon by various writers, many of whom are mentioned by Hájí Khalfah.[1]

The Hanafí sect, as has already been remarked, is the one which obtains most commonly, and indeed almost entirely, amongst the Muhammadans of India; but the doctrines of its great founder are sometimes qualified, in deference to the opinions of two of his most famous pupils. Sir William Jones says, "that although Abú Hanífah be the acknowledged head of the prevailing sect, and has given his name to it, yet so great veneration is shewn to Abú Yúsuf, and the lawyer Muhammed, that, when they both dissent from their master, the Musselman judge is at liberty to adopt either of the two decisions which may seem to him the more consonant to reason, and founded on better authority."[2]

In former times it seems that Abú Hanífah's opinion was preferred, even when both the disciples dissented from him; but this is not the case at the present day. There is also a distinction of authority to be observed; viz. that where the two disciples differ from their master and from each other, the authority of Abú Yúsuf, particularly in judicial matters, is to be preferred to that of Muhammad. In the event, however, of one disciple agreeing with Abú Hanífah, there can be no hesitation in adopting that opinion which is consonant with his doctrine.

Abú Yúsuf Ya'kúb Ben Ibráhím al-Kúfí was born in A.H. 113 (A.D. 731), and died at Baghdád in A.H. 182 (A.D.

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[1] Háj. Khalf. Tom. IV. p. 457.

[2] Sir William Jones's Works, Vol. III. p. 510. 4to. Lond. 1799. And see a passage from the Tabakát al-Hanafíyat, quoted by Mírzá Kásim Beg, where the same fact is stated.—Journal Asiatique, 4me Série, Tome XV. p. 203.

798). He was a pupil of Abú Hanífah, and was first appointed to the office of Kází of Baghdád by the Khalífah al-Hádí: subsequently he was raised to the dignity of Kází al-Kuzát, or Chief Civil Magistrate, by the Khalífah Hárún ar-Rashíd, being the first who held that high office. The only work known to have been written by Abú Yúsuf treats of the duties of a magistrate, and is entitled Adab al-Kází.[1] The reputation of this work has been eclipsed by that of another, having a similar title, by Al-Khassáf, which will presently be mentioned. Abú Yúsuf is said to have committed his notes to his pupil, the Imám Muhammad, who made great use of them in the composition of his works.

Abú 'Abd Allah Muhammad Ben Husain ash-Shaibání, was born at Wásitah in 'Irák al-'Arab, in A.H. 132 (A.D. 749), and died at Ray, the capital of Khurásán, in A.H. 187 (A.D. 802). The Imám Muhammad, as he is most generally called, was a fellow pupil of Abú Yúsuf, under Abú Hanífah, and on the death of the latter pursued his studies under the former. It is also stated, that, in his younger days, he was instructed by the Imám Málik. His chief works are six in number, of which five are considered of the highest authority, and are cited under the title of the Záhir ar-Rawáyát, or Conspicuous Reports.[2]

The Jámi' al-Kabír,[3] the first of the Záhir ar-Rawáyát, contains a body of most important questions of jurisprudence, and has been commented upon by many learned doctors, amongst whom we find the well-known Shams al-Aïmmah Abú Bakr Muhammad as Sarakhsí, who died in A.H. 490 (A.D. 1096), and Burhán ad-Dín Mahmúd Ben Ahmad, each of whom composed a work entitled Al-Muhít, which will be presently noticed.

The Jámi' as-Saghír,[4] the second of the works of the Imám

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[1] Har. Anal. p. 234, n. 2d edit. Háj. Khalf. Tom. I. p. 219.
[2] Har. Anal. p. 230, n. 2d edit. [3] Háj. Khalf. Tom. II. p. 564.
[4] Háj. Khalf. Tom. II. p. 553.

Muhammad, is perhaps even more celebrated than the Jámi' al-Kabír; and it is in its composition that he seems to have been chiefly indebted to Abú Yúsuf. The Commentaries on the Jámi' as-Saghír are very numerous: the best known is by As-Sarakhsí, and there is also one of some note by Burhán ad-Dín 'Alí, the author of the Hidáyah.

The third work of the Imám Muhammad is the Mabsút fí Furú' al-Hanafíyat,[1] which is also of great celebrity, and has received numerous comments.

The Ziyádát fí Furú' al-Hanafíyat,[2] the fourth of the Conspicuous Reports, is said to have been composed under the inspection and with the approbation of Abú Yúsuf. It is a work highly esteemed, and, together with its supplement by the same author, has been commented upon by a multitude of writers, amongst whom are As-Sarakhsí, and Kázi Khán Hasan Ben Mansúr al-Uzjandí, who died in A.H. 592 (A.D. 1195).

The fifth of the Záhir ar-Rawáyát is called the Siyar al-Kabír wa as-Saghír,[3] and is supposed to have been the latest work of its author. The name of Abú Yúsuf nowhere occurs in the Siyar.

The Nawádir, the sixth and last of the known compositions of the Imám Muhammad, though not so highly esteemed as the others, is still greatly respected as an authority.

The next authorities among the Hanafís of India, after the founder of their sect and his two disciples, are the Imám Zufar Ben al-Hazíl, who was Chief Judge at Basrah, where he died in A.H. 158 (A.D. 774),[4] and Hasan Ben Ziyád: these lawyers were contemporaries, friends, and scholars, of Abú Hanífah, and their works are stated to be quoted in India as

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[1] Háj. Khalf. Tom. V. p. 364.
[2] Háj Khalf. Tom. III. p. 552.
[3] Háj. Khalf. Tom. III. p. 637.
[4] Hamilton's Hedaya, Preliminary Discourse, p. xxxv.

authorities for that Imám's doctrines, more especially when the two disciples are silent.[1]

In addition to the above, the following are a few of the works according to the doctrines of the Hanafí school, best known, and most frequently referred to in India, or in the works of chief authority in that country.

Abú Bakr Ahmad Ben 'Amr al-Khassáf was the author of the most celebrated of several treatises known by the name of Adab al-Kází. He died in A.H. 261 (A.D. 874). Hájí Khalfah speaks very highly of this work, which contains one hundred and twenty chapters, and has been commented upon by many learned jurists: the most esteemed Commentary is that of 'Umar Ben 'Abd al-'Azíz Ben Mázah, commonly called Husám ash-Shahíd, who was killed in A.H. 536 (A.D. 1141).[2]

Abú Ja'far Ahmad Ben Muhammad at-Taháwí is one of the numerous commentators on the Jámi' as-Saghír of the Imám Muhammad: he also wrote an abridgment of the Hanafí doctrines, called the Mukhtasar at-Taháwí. Both works are often quoted as authorities in India, but they are not known to exist in that country at the present day. At-Taháwí died in A.H. 321 (A.D. 933).[3]

The Mukhtasar al-Kudúrí by Abú al-Husain Ahmad Ben Muhammad al-Kudúrí, is among the most esteemed of the works which follow the doctrines of Abú Hanífah, and is of high authority in India; indeed, it is in such general repute, that Hájí Khalfah, when speaking of those several works which are emphatically designated by antonomasia, "Al-Kitáb" or "the Book," says, that if, in matters connected with jurisprudence, such expression be used, it signifies the

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[1] Harington quotes the Fatáwa al-Hammádíyah in proof of this statement. Har. Anal. p. 229. 2d edit.

[2] Háj. Khalf. Tom. I. p. 220.

[3] Háj. Khalf. Tom. V. p. 414.

Mukhtasar al-Kudúrí.[1] It is a general treatise on law, and contains upwards of twelve thousand cases. As may be supposed with regard to a work of such celebrity, it has been commented on by numerous writers: several of the Commentaries are quoted in the Fatáwa al-'Álamgírí. Al-Kudúrí died in A.H. 428 (A.D. 1036).[2]

The section of Al-Kudúrí's work relating to the warring against infidels was published in the original, with a Latin translation by Rosenmüller, in the year 1825.[3]

A well-known Commentary on the Mukhtasar al-Kudúrí is entitled Al-Jauharat an-Nayyirat,[4] and is sometimes called Al-Jauharat al-Munírat.[5] Baillie says that this work, though of later date than the Hidáyah, is perhaps more valuable in other respects.[6]

Shams al-Aïmmah Abú Bakr Muhammad as-Sarakhsí, mentioned above as the author of comments upon the Jámi' al-Kabír and the Jámi' as-Saghír of the Imám Muhammad, and of other works, composed, whilst in prison at Uzjand, a law-book of great extent and authority, entitled the Mabsút.[7] He was also the author of the most generally celebrated of the many works entitled Al-Muhít, which is derived in a great measure from the Mabsút, the Ziyádát, and the Nawádir of the Imám Muhammad.[8]

Burhán ad-Dín Mahmúd Ben Ahmad, already spoken of, also wrote a Muhít, which, though known in India, is not so greatly esteemed as the Muhít as-Sarakhsí. The work of Burhán ad-Dín Mahmúd is commonly known as the Muhít al-Burhání, and is taken principally from the Mabsút, the two

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[1] Hájj. Khalf. Tom. V. p. 30. De Sacy Anthologie Grammaticale Arabe, p. 381.

[2] Ibn Khall. Vol. I. p. 59. De Sacy Chrest. Arabe, Tome II. p. 100. Hájj. Khalf. Tom. V. p. 451.

[3] Rosenmüller, Analecta Arabica, Pars I. 4to. 1825.

[4] Hájj. Khalf. Tom. V. p. 452. [5] Hájj. Khalf. Tom. II. p. 656.

[6] Baillie's Moohummudan Law of Inheritance, Pref. p. vii.

[7] Hájj. Khalf. Tom. V. p. 363. [8] Hájj. Khalf. Tom. V. p. 433.

Jámi's, the Siyar, and the Ziyádát, of the Imám Muhammad: the author also made use of the Nawádir of the same doctor in composing his work.[1]

The Shaikh 'Alá ad-Dín Muhammad as-Samarkandí composed a compendium of Al-Kudúrí's Mukhtasar, which he entitled the Tuhfat al-Fukahá.[2] The work of 'Alá ad-Dín was commented upon by his pupil Abú Bakr Ben Mas'úd al-Káshání, who died in A.H. 587 (A.D. 1191).[3] This comment is entitled Al-Badáï' as-Sanáï'. Both the text and its comment, though not known in India, are often quoted as authorities.

The Hidáyah is the most celebrated law treatise according to the doctrines of Abú Hanífah, and his disciples Abú Yúsuf and the Imám Muhammad, which exists in India: it is a Commentary on the Badáï' al-Mubtadá, and both the text and comment are from the pen of Burhán ad-Dín 'Alí Ben Abú Bakr al-Marghínání, who, after employing thirteen years in writing the Hidáyah, died in A.H. 593 (A.D. 1196).[4] The divisions and general arrangement of the Hidáyah are taken from the Jámi' as-Saghír of the Imám Muhammad, and it consists of a Digest of approved law cases, illustrated by proofs and arguments. Hájí Khalfah says, in describing the Hidáyah, "it is a practice observed by the composer of this work to state first the opinions and arguments of the two disciples (Abú Yúsuf, and the Imám Muhammad); afterwards the doctrine of the great Imám (Abú Hanífah); and then to expatiate on the proofs adduced by the latter, in such manner as to refute any opposite reasoning on the part of the disciples.

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[1] Háj. Khalf. Tom. V. p. 431. [2] Háj. Khalf. Tom. II. p. 235.

[3] Háj. Khalf. Tom. II. p. 235.

[4] Háj. Khalf. Tom. VI. p. 479. The text of the Hidáyah corresponds generally with Al-Kudúrí, and from this circumstance, and a similar correspondence between it and the text of the Jauharat an-Nayyirat, it may perhaps be inferred that the Mukhtasar al-Kudúrí is really the original text of the Hidáyah. See Baillie, Moohummudan Law of Sale; Preliminary Remarks, p. xv. note.

Whenever he deviates from this rule, it may be inferred that he inclines to the opinions of Abú Yúsuf and the Imám Muhammad. It is also his practice to illustrate the cases specified in the Jámi' as-Saghír and Kudúrí, intending the latter whenever he uses the expression 'he has said in the book.' In praise of the Hidáyah, it has been declared, like the Kurán, to have superseded all previous books on the law; that all persons should remember the rules prescribed in it; and that it should be followed as a guide through life."

The same motive which dictated the compilation of the Hindú Code, induced Warren Hastings to recommend that a translation should be made into English of the Hidáyah; and accordingly Mr. Hamilton undertook the task; unfortunately, however, it was suggested by the Muhammadan lawyers who were consulted on the occasion, that inasmuch as the idiom of the author was particularly close and obscure, a Persian version should be first made "under the inspection of some of their most intelligent doctors, which would answer the double purpose of clearing up the ambiguities of the text, and, by being introduced into practice, of furnishing the native judges of the Courts with a more familiar guide, and a more instructive preceptor, than books written in a language of which few of them have opportunities of attaining a competent knowledge."[1] This was accordingly done; and from this Persian translation Mr. Hamilton executed his English version,[2] which is thus rendered less to be depended upon than if it had been made from the original Arabic, without adding in any degree to its intelligibility. The work of Burhán ad-Dín 'Alí as we possess it in this translation, is, however, a most useful book, although it contains much that is unimportant, and omits altogether the Law of Inheritance, which is, perhaps, the most important of all.

The text of the Hidáyah was published in the original

[1] Hamilton's Hedáya, Prelim. Disc. p. xliv.

[2] The Hedáya, or Guide; a Commentary on the Musulman laws, translated by Charles Hamilton. 4 Vols. 4to. Calcutta, 1791.

Arabic at Calcutta in A.H. 1234 (A.D. 1818),[1] and was again edited, together with its Commentary, the Kifáyah, by Hakím Maulaví 'Abd al-Majíd in 1834.[2] The Persian version was also published at Calcutta in the year 1807.[3]

A work of such great celebrity and authority as the Hidáyah has of course been illustrated by a large number of Commentaries, the first of which is said to have been written by Hamíd ad-Dín 'Alí al-Bukhárí, who died in A.H. 667 (A.D. 1268), and is a short tract entitled the Fawáïd. The glosses of the Hidáyah which are most conspicuous for their reputation in India, are the Niháyah, the 'Ináyah, the Kifáyah, and the Fath al-Kadír.

The Niháyah of Husám ad-Dín Husain Ben 'Ali, who is said to have been a pupil of Burhán ad-Dín 'Alí, and died in A.H. 710 (A.D. 1310),[4] was the first composed of these; and it is important as supplying the omission of the Law of Inheritance in the Hidáyah, although the chapter on this law is stated not to be looked upon as of equal authority with the Faráïz as-Sirájíyah, which will be hereafter described.

There are two Commentaries on the Hidáyah entitled 'Ináyah;[5] but the one more commonly known by that name was written by the Shaikh Akmal ad-Dín Muhammad Ben Mahmúd, who died in A.H. 786 (A.D. 1384). The 'Ináyah is much esteemed for its studious analysis and interpretation of the text.

The Arabic text of the 'Ináyah was published in Calcutta in 1837, edited by Ramdhan Sen.[6]

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[1] الهداية 2 Vols. Folio, Calcutta, A.H. 1234 (A.D. 1818).

[2] الهداية مع شرحها الكفاية فى المسائل الفقهية و دلائلها النقلية و العقلية
The Hidayah, with its Commentary, called the Kifayah, a Treatise on questions of Mohammadan law, published by Hukeem Moulvee Abdool Mujeed. Vols. 4to. Calcutta, 1834.

[3] هدايهٔ فارسي ترجمه كرده مولوي غلام يحيي خان و ديكر علما
4 Vols. 8vo. Calc. A.H. 1221 (A.D. 1807).

[4] Háj. Khalf. Tom. VI. p. 480. [5] Háj. Khalf. Tom. IV. p. 269.

[6] العناية شرح الهداية فى المسائل الفقهية و دلائلها النقلية و العقلية
Innyah, a Commentary on the Hidayah; a work on Mohammedan Law

The third Commentary, the Kifáyah, is by Imám ad-Dín Amír Kátib Ben Amír 'Amr, who had previously written another explanatory gloss of the same work, and entitled it the Gháyat al-Bayán. The Kifáyah was finished in A.H. 747 (A.D. 1346), and, besides the author's own observations, gives concisely the substance of other Commentaries.

The original text of the Kifáyah, accompanied by that of the Hidáyah, has been published as mentioned above.

The Fath al-Kadír lil-'Ájiz al-Fakír, by Kamál ad-Dín Muhammad as-Siwásí, commonly called Ibn Hammám, who died in A.H. 861 (A.D. 1456),[1] is the most comprehensive of all the comments on the Hidáyah, and includes a collection of decisions which render it extremely useful.

The Wáfí by Abú al-Barakát 'Abd Allah Ben Ahmad, commonly called Háfiz ad-Dín an-Nasafí, and its Commentary, the Káfí, by the same author, are works of some authority. An-Nasafí died in A.H. 710 (A.D. 1310).

An-Nasafí is also the author of the Kanz ad-Dakáïk,[2] a book of great reputation, principally derived from the Wáfí, and containing questions and decisions according to the doctrines of Abú Hanífah, Abú Yúsuf, the Imám Muhammad, Zufar, Ash-Sháfi'í, Málik, and others. Many Commentaries have been written on this work: the most famous is the Bahr ar-Ráïk, which may, indeed, almost be said to have superseded it in India. The Bahr ar-Ráïk is by Zain al-'Ábidín Ben Nujaim al-Misrí, who died in A.H. 970 (A.D. 1562).[3] He left his work incomplete at his death, but it was finished by his brother, Siráj ad-Dín 'Umar, who also wrote another and inferior Commentary on the same work, entitled the Nahr al-Fáïk.

The Tabyín al-Hakáïk,[4] which is another Commentary on the Kanz ad-Dakáïk, was composed by Fakhr ad-Dín Abú

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compiled by Muhammad Akmuloodeen, Ibn Muhmood, Ibn Ahmudonil Hunufee; edited by Moonshee Ramdhun Sen. 4 Vols. 4to. Calcutta, 1837.

[1] Háj. Khalf. Tom. VI. p. 484.
[2] Háj. Khalf. Tom. V. p. 249.
[3] Háj Khalf. Tom. V. p. 250.
[4] Haj. Khalf. Tom. V. p. 250.

Muhammad Ben 'Alí az-Zaila'í, who died in A.H. 743 (A.D. 1342), and is in great repute in India, on account of its upholding the doctrines of the Hanafí sect against those of the followers of Ash- Shafi'í.

Two other Commentaries on the Kanz ad-Dakáïk deserve mention: one is called the Ramz al-Hakáïk, and is by Badr ad-Dín Mahmúd Ben Ahmad al-'Ainí, who died in A.H. 855 (A.D. 1451);[1] the other is the Matlab al-Fáïk by Badr ad-Dín Muhammad Ben 'Abd ar-Rahman ad-Dairí:[2] the latter is much esteemed in India.

The Wikáyah ar-Rimáyah which was written in the seventh century of the Hijrah, by Burhán ash-Sharíyat Mahmúd, as an introduction to the study of the Hidáyah,[3] has been comparatively eclipsed by its Commentary, the Sharh al-Wikáyah, by 'Ubaid Allah Ben Mas'úd, who died in A.H. 750 (A.D. 1349): this author's work combines the original text with a copious gloss explanatory and illustrative. Both the Wikáyah and the Sharh al-Wikáyah are used for elementary instruction in the Muhammadan Colleges. Other Comments on the Wikáyah exist, but they are of no great note.

The Sharh al-Wikáyah has been printed and published at Calcutta.[4]

The Nukáyah is another elementary law book well known in India, and is by the author of the Sharh al-Wikáyah: it is sometimes called the Mukhtasar al-Wikáyah, being, in fact, an abridgment of that work.[5]

The original Arabic text of the Mukhtasar al-Wikáyah, was printed and published at Kasan in the year 1845.[6]

Three Comments on the Nukáyah are much esteemed: they

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[1] Haj. Khalf. Tom. V. p. 250.

[2] Háj. Khalf. Tom. V. p. 252. Harington seems to confound these two Commentaries. Har. Anal. p. 238 and note. 2d. edit.

[3] Haj. Khalf. Tom. VI. p. 458.

[4] شرح الوقايه 4to. Calc. N.D. [5] Háj. Khalf. Tome VI. p. 373.

[6] مختصر الوقايه Kasan, A.H. 1261 (A.D. 1845).

were written respectively by Abú al-Makárim Ben 'Abd Allah in A.H. 907 (A.D. 1501), Abú 'Alí Ben Muhammad al-Birjindí in A.H. 935 (A.D. 1528), and Shams ad-Dín Muhammad al-Khurásání in A.H. 941 (A.D. 1534).

The Ashbah wa an-Nazáïr is also an elementary work of great reputation by Zain al-'Ábidín, the author of the Bahr ar-Ráïk already mentioned. Hájí Khalfah speaks of this work in high terms, and enumerates several Appendices to it that have been composed at different times.[1]

The original text of the Ashbah wa an-Nazáïr was published at Calcutta in the year 1826, edited by Ramdhan Sen;[2] and was again printed at the same place, together with a Commentary by Ahmad Ben Muhammad al-Hamawí in 1844.[3]

There is a law treatise entitled Núr al-Anwár fí Sharh al-Manár, by the Shaikh Jún Ben Abí Sayyid al-Makkí: it was published at Calcutta in the year 1819.[4] A new edition of this work was published in lithography at Lakhnau, in 1849.[5]

A small tract on the sources of the law, entitled the Usúl ash-Sháshi, together with an explanatory Commentary, was printed in lithography, at Dihlí, in the year 1847.[6]

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[1] Háj. Khalf. Tom. I. p. 309.

[2] الاشباه و النظائر Al-Ashbaho wa al-Nazaïr, a Treatise on Mohammedan law, originally compiled by Zein al-Abdin Ibne Najim, edited by Munshi Ramdhan Sen. 4to. Calc. 1826.

[3] الاشباه و النظائر مع شرحه الحموي في المسائل الفقهية علي المذهب الحنفية اما المتن فهو لافضل المتاخرين مولانا زين العابدين ابراهيم المشتهر بابن نجيم المصري الحنفي و اما الشرح فهو لمولانا السيّد احمد بن محمّد الحنفي الحموي 4to. Calcutta, A.H. 1260 (A.D. 1844.)

[4] نور الانوار في شرح المنار Fol. Calcutta, 1819.

[5] كتاب نور الانوار في شرح المنار. 8vo. Lakhnau, A.H. 1266 (A.D. 1849).

[6] هذا الكتاب المعروف باصول الشاشي 8vo. Dehli, A.H. 1264 (A.D. 1847).

The Asás al-Usúl, by the Sayyid Dildár 'Alí Ben Sayyid Muhammad Mu'ín al-Ḥindí an-Nasrábádí is also a treatise on the sources of the law. It was published in lithography, at Lakhnau, in the same year.[2]

A short general treatise in Urdú, entitled Fikh Ahmadí, by Maulaví Kadrat Ahmad Ben Háfiz 'Ináyat Ahmad al-Farúkí, was lithographed at Dilhí, in 1847.[3]

At the same place, and in the same year, appeared a translation in Urdú by Muhammad Husain Ben Muhammad Bákir of a Persian treatise on the law of marriage, by Mullá Muhammad Bákir.[4] This work is also lithographed.

These are the principal law-books of the third class that are known, and are of authority among the Sunnís of the Hanafí sect in India; but, as may be imagined, it is only a few of these that are quoted in the Courts; the Hidáyah and its comments, illustrated by the books of Fatáwa, generally sufficing to satisfy the Judges, and to offer sufficient grounds on which to base a decision.

Many works according to the doctrines of Abú Hanífah have been written, and are received as authorities in the Turkish empire. These I apprehend would be admissible if quoted in our Courts in India where the parties to a suit are of the Hanafí persuasion.

The most celebrated of these is the Multaka al-Abhár, by the Shaikh Ibráhím Ben Muhammad al-Halabí, who died in A.H. 956 (A.D. 1549). This work, which is an universal code of Muhammadan law, contains the opinions of the four chief Mujtahid Imáms, and illustrates them by those of the principal

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[1] اساس الاصول. 8vo. Lakhnau. A.H. 1264 (A.D. 1847).

[2] فقه احمدي. 8vo. Dehli, A.H. 1264 (A.D. 1847).

[3] ترجمهٔ رسالهٔ نكاح مولفه ملّا محمّد باقر مجلسي بزبان فارسي كه آنرا محمّد حسين بن محمّد باقر بزبان اردو ترجمه نمود در بيان نكاح و عبرد امور حلال و حرام. 8vo. Delhi, 1264 (A.D. 1847.)

jurisconsults of the school of Abú Hanífah. It is more frequently referred to as an authority throughout Turkey, than any other treatise on jurisprudence.[1]

The Multaka al-Abhár was published in the original Arabic, at Constantinople, in A.H. 1251 (A.D. 1835);[2] and a Commentary on it, entitled the Majma' al-Anhár, by 'Abd ar-Rahman Ben Shaikh Muhammad, commonly known by the name of Shaikh Zádah, was published at the same metropolis, in A.H. 1240 (A.D. 1824).[3] A Turkish translation, accompanied by a commentary by Muhammad Mavkúfátí, called after his name, Al-Mavkúfátí,[4] appeared at Búlák, in the year 1838. The Multaka has been also translated, in a great part, into French, and constitutes the basis of D'Ohsson's magnificent work on the Ottoman Empire.

The Durar al-Hukkám, by Muhammad Ben Farámurz, commonly called, Mullá Khusrú, who died in A.H. 885 (A.D. 1480), is a Commentary upon a law treatise by the same author, entitled the Ghurar al-Ahkám.[5] Mullá Khusrú, who is one of the most renowned of the Turkish jurisconsults, completed his work in A.H. 882 (A.D. 1477). It is very voluminous, and, as an authority, is second only to the Multaka al-Abhár, which is preferred to it chiefly on account of its comparative brevity.[6]

The text of the Durar al-Hukkám was published at Constantinople in the year 1844.[7] A Turkish translation of this Commentary, accompanied by the Arabic text of the Ghurar

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[1] D'Ohsson, Tableau General de l'Empire Othoman. Tome I. Introd. Sect. III.

[2] ملتقي الابحار 4to. Constantinople, A.H. 1251 (A.D. 1835).

[3] مجمع الانهار 4to. Constantinople, A.H. 1240 (A.D. 1824).

[4] الموقوفاتى Folio. Búlák, A.H. 1254 (1838).

[5] Háj. Khalf. Tom. III. p. 215, and Tom. IV. p. 312.

[6] Journal Asiatique, 4me Série. Tome III. p. 216.

[7] درر الحكام في شرح غرر الاحكام 4to. Constantinople, A.H. 1260 (A.D. 1844).

al-Ahkám, appeared previously, at the same place, in the year 1842.[1]

A tract on Penal Laws, in Turkish, was published at Constantinople, in A.H. 1254 (A.D. 1838): it is entitled Kánún Námah-i Jazá.[2] The penal clauses in the Khatt-i Sharíf have been twice printed; once in Turkish,[3] published at Constantinople in 1841; and again in Turkish, with a German translation by Petermann,[4] published at Berlin in the following year.

It will be unnecessary to dwell at any length upon the books which have been composed according to the doctrines of the three other principal Sunní sects.

I have already mentioned, that the sect founded by Málik Ben Anas is not known to prevail in any part of India; but the student of Muhammadan law will consult with interest two treatises which have lately appeared in France on the Málikí doctrines.

The first of these was published in 1842, by M. Vincent.[5] It contains a short account of the origin of the Málikí doctrine, principally derived from Al-Makrízí,[6] a description of the most noted works treating of that doctrine,[7] and a translation of the chapter on Criminal Law, taken from the Risálah of Abú Muhammad 'Abd Allah Ben Abú Zaid al-Kairuwání.[8] The preliminary matter in M. Vincent's treatise is very interesting.

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[1] ترجمه درر الحكّام في شرح غرر الاحكام Folio. Constantinople, A.H. 1258 (A.D. 1842).

[2] قانون نامهٔ جزاء 8vo. Const. A.H. 1254 (A.D. 1839).

[3] صورت خطّ شريف Const. A.H. 1251 (A.D. 1841).

[4] Beitrage zu einer Geschichte der neuesten Reformen des osmanischen Reiches, enthaltend den Hattischerif von Gûlhane, den Ferman von 21 Nov. 1839 und das neueste Strafgesetzbuch, turkisch und deutsch, in Verbindung mit Ramis Effendi herausgegeben von J. H. Petermann. 8vo. Berl. 1842.

[5] Etudes sur la Loi Musulmane (Rit de Malek) Législation Criminelle. Par M B Vincent. 8vo. Paris. 1842.

[6] Ibid. p. 13. [7] Ibid. p. 31. [8] Ibid p. 63.

The second is a French translation, by M. Perron, of the Mukhtasar of Khalíl Ibn Isháḳ, who flourished in the fourteenth century of our æra.[1] The Mukhtasar is a work professedly treating of the law according to the Málikí doctrines, and is of conclusive authority in Algeria, Tunis, Tripoli, Morocco, Senegal, and almost all parts of Africa where the Muhammadan religion is prevalent. M. Perron's version has been undertaken by order of the French Government, for the especial use of those who are employed in the administration of justice in Algeria, and is the more valuable, as the translator has not confined himself to a bare translation of the original text, but has illustrated all the obscure passages by introducing explanations from the different commentators on the work. It is the first complete translation of a general treatise on Muhammadan jurisprudence that has appeared. The typographical excellence of the volumes, combined with their lowness of price, do honour to the liberality of the French Government.

The original text of the Mukhtasar of Khalíl has been edited by M. Richebé under the direction of M. Reinaud, and was published at Paris in 1855. It is printed in the Maghrabí character.[2]

The works of MM. Vincent and Perron, above mentioned, are peculiarly worthy of notice as being the first, and indeed the only ones, devoted to the explanation of the Sunní doctrines other than those of Abú Hanífah, that have been published in any European language.

Ash-Sháfi'í, the third of the chief Mujtahid Imáms, and the preceptor of Ibn Hanbal, besides the works on the traditions already noticed, is said to have composed a most excellent treatise on jurisprudence, entitled Al-Fikh al-Akbar; but

[1] Précis de Jurisprudence Musulmane selon le Rite Mâlékite. Par Khalil Ibn Ishâk. Traduit de l'arabe par M. Perron. Paris. Imp. 8vo. 6 Tomes, 1848—54.

[2] Précis de Jurisprudence Musulmane suivant le rit Malékite, par Sidi Khalil. Paris, 8vo. 1855.

it has been questioned whether he was the author.[1] Abú Ibráhím Isma'íl Ben Yahya al-Muzaní, who was a distinguished disciple of Ash-Sháfi'í, and a native of Egypt, was the most celebrated among that doctor's followers for his acquaintance with the legal system and juridical decisions of his preceptor, and for his knowledge of the traditions. Amongst other works, he wrote the Mukhtasar, the Mansúr, the Rasáïl al-Mu'tabira, and the Kitáb al Wasáïk. The Mukhtasar is the basis of all the treatises composed on the legal doctrines of Ash-Shafi'í, who himself entitled Al-Muzaní "the champion of his doctrine." Al-Muzaní died in A.H. 264 (A.D. 877).[2]

The writings of the followers of Ibn Hanbal are few in number, and it will be needless to mention any of them in this place, as they are never quoted in India, where his sect is not found to prevail.

The Shí'ah works of the third class are, perhaps, not so numerous in proportion to those of the Sunnís, as are their works on the traditions, the writers of the Shí'ah sects having expended more labour upon theological controversy, and that portion of the law immediately connected with the doctrines of their faith and their religious observances, than upon those branches which treat of civil and criminal jurisprudence. The materials for a description of this class of law-books are scanty. The bibliographers give little more than their names, which, as is most frequently the case with regard to the titles of oriental works, afford scarcely any information as to their contents: in addition to this, MSS. of Shí'ah law-books are rarely to be met with in any of our libraries.

'Abd Allah Ben 'Alí al-Halabí was one of the first writers on Shí'ah jurisprudence as he was amongst the earliest compilers of the traditions of that sect. It does not appear, however, that any of his legal compositions are extant.

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[1] Háj. Khalf. Tom. IV. p. 459.

[2] Ibn Khall. Vol. I. p. 200; Haj. Khalf. Tom. V. p. 450.

Yúnás Ben 'Abd ar-Rahman al-Yuktainí, who has been spoken of as a writer on traditions, composed a number of law treatises of the present class. The most famous is entitled the Jámi' al-Kabír.

Abú al-Hasan 'Alí Ben al-Husain al-Kumí, commonly called Ibn Bábawaih, who died in A.H. 329 (A.D. 940), was the author of several works of note, one of which is called the Kitáb ash-Sharáï'. This writer is looked upon as a considerable authority, although his fame has been almost eclipsed by his more celebrated son, Abú Ja'far Muhammad, already mentioned as a traditionist. When these two writers are quoted together, they are called the two Sadúks. The best known of the law-books of the present class, composed by Abú Ja'far, is the Makna' fí al-Fikh. Abú Ja'far is said to have written in all one hundred and seventy-two works, and to have been especially skilled in Ijtihád.

Abú 'Abd Allah Muhammad Ben Muhammad Ben an-Nu'mán, surnamed the Shaikh Mufíd and Ibn Mu'allim, was a renowned Shí'ah lawyer. Abú Ja'far at-Túsí describes him in the Fihrist as the greatest orator and lawyer of his time, the most eminent Mujtahid, the most subtle reasoner, and the chief of all those who delivered Fatwas.[1] Ibn Kasír ash-Shámí relates, that when he died—an event which took place in A.H. 413, or, as some say, in 416 (A.D. 1022—1025)—Ibn an-Nakíb, who was one of the most learned of the Sunní doctors, adorned his house, told his followers to congratulate him, and declared, that since he had lived to see the death of the Shaikh Mufíd he should himself leave the world without regret. The Shaikh Mufíd is stated to have written two hundred works, amongst which, one called the Irshád is well known. These are all enumerated in the Majális al-Muminín, on the authority of the Shaikh Najáshí. When the Shaikh Mufíd is quoted in conjunction with Abú Ja'far at-Túsí they are spoken of as the two Shaikhs.

[1] At-Túsi, p. ٣١٤.

Abú Ja'far Muhammad at-Túsí, who has been already noticed as a writer on biography, a commentator on the Kurán, and one of the most distinguished of the Shí'ah compilers of traditions, is also of the highest authority as an author of the present class of law-books. His chief works are the Mabsút and the Khiláf, which are held in great estimation, as are also the Niháyah and the Muhít, by the same author. The Risálat-i Ja'fariyah is likewise a legal treatise by At-Túsí which is frequently quoted.

The most generally known of all the Shí'ah lawyers is the Shaikh Najm ad-Dín Abú al-Kásim Ja'far Ben Muayyid al-Hillí, commonly called the Shaikh Muayyid. He died in A.H. 676 (A.D. 1277). His great work, the Sharáï' al-Islám is more universally referred to than any other Shí'ah law-book, and is the chief authority for the law of the Indian followers of 'Alí.

The original text of the Sharáï' al-Islám was edited in Calcutta, by Maulaví Sayyid Aulád Husain and Maulaví Zahúr 'Alí, and published in the year 1839.[1]

A valuable and voluminous Commentary upon the Sharáï' al-Islám, entitled the Masálik al-Afhám, was written by Zain ad-Dín 'Alí as-Sá'lí, commonly called the second Shahíd.

Yahya Ben Ahmad al-Hillí, who was celebrated for his knowledge of traditions, and who died in A.H. 679 (A.D. 1280), is well known amongst the Imámíyah sect for his works on jurisprudence. The Jámi' ash-Sharáï' and the Mudkhal dar Usúl-i Fikh are in the greatest repute.

The Shaikh al-'Allámah Jamál ad-Dín Hasan Ben Yúsuf Ben al-Mutahhir al-Hillí is called the chief of the lawyers of Hillah. He has been already mentioned as the author of the

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[1] كتاب شرائع الاسلام في بيان مسائل الحلال و الحرام من تصانيف المولانا المحقق ابي القاسم الحلي The Sharaya ool Islám, a treatise "on lawful and forbidden things," by Aboo'l Kasim of Hoolla. Edited by Moolvee Seyud Oulad Hoscin and Moolvee Zuhoor Ulee. 4to. Calcutta, 1839.

Khulásat al-Akwál; nor is his name second to any other as a writer of the present class of Shí'ah law-books, his legal works being very numerous, and frequently referred to as authorities of undisputed merit. The most famous of these are the Talkhís al-Marám, the Ghúyat al-Ahkám, and the Tahrír al-Ahkám, which last is a justly celebrated work. The Mukhtalaf ash-Shí'ah is also a well-known composition of this great lawyer; and his Irshád al-Azhán is constantly quoted as an authority, under the name of the Irshád-i 'Allámah.

The Jámi'-i 'Abbásí is a concise and comprehensive treatise in Persian on Shí'ah law, comprising twenty books.[1] It is generally considered as the work of Bahá ad-Dín Muhammad 'Ámilí, who died in A.H. 1031 (A.D. 1621); but that lawyer only lived to complete the first five books, dedicating his work to Sháh 'Abbás II. The remaining fifteen books, as I have ascertained from a MS. preserved in the Radcliffe Library at Oxford, and forming part of the collection procured in the East by Mr. James Fraser,[2] were subsequently added by Nizám Ibn Husain as-Sáwaï. This fact is not mentioned in the only other MS. of the entire work which I have met with; but in the Fraser MS., which comprises two volumes, the first containing the first five books, there is a distinct Preface to the sixth book, where it is expressly stated; and it is corroborated by the existence of a MS. in the Library of the East-India Company,[3] which contains the first five books only of the Jámi' 'Abbásí, illustrated with notes, forming a perpetual commentary, taken from the principal Shí'ah law authorities, by 'Izz ad-Dín Muhammad Ben Mír Abú al-Hasan al-Husainí al-Musawí, who entitled his work the Majmu'-i Izdiyád.

[1] This work must not be confounded with another under the same title, which is an abridgment of the Fatáwa-i Muhammadí by 'Abd ar-Rahman 'Abbás, and is dedicated to Típú Sultán. See Stewart's Catalogue of the Library of Tippoo Sultan, p. 157, No. XCIII.

[2] MS. I. 4—25. And see Fraser's Catalogue at the end of his History of Nádir Sháh, p. 32. 8vo. Lond. 1742. [3] MS. No. 1980.

Two modern Shí'ah works of the present class are deserving of notice: these are, the Mufátih, by Muhammad Ben Murtaza, surnamed Muhsan, and a Commentary on that work by his nephew, who was of the same name, but surnamed Hádí.

The Mukhtasar an-Náfi' is a Shí'ah law treatise very frequently quoted. It is by the author of the Sharáï' al-Islám.

A general digest of the Imámíyah law in temporal matters was compiled under the superintendence of Sir William Jones, the text of which still remains in MS. The first portion of this Digest was translated by Colonel Baillie,[1] who introduced some valuable additions, particularly the ninth and tenth books, which are translated from the Tahrír al-Ahkám of 'Allámah al-Hillí. It is greatly to be regretted that this work was not completed, and that the Preliminary Discourse promised, and so frequently referred to by the translator in the first volume, was never published, as there can be no doubt that Colonel Baillie's extensive knowledge and means of acquiring information on the subject would have supplied the numerous and unavoidable deficiencies of the present imperfect sketch of the authorities of Shí'ah law.

IV. The works which treat separately and especially of the 'Ilm al-Faráïz, or science of dividing inheritances, are not numerous in India, the Sirájíyah, and its Commentary the Sharífíyah, being almost the only books on the subject referred to by the lawyers of the Hanafí school.

Abú Sa'd Zaid Ben Sábit, one of Muḥammad's Ansárs, or allies, who died at Madínah in A.H. 54 (A.D. 673), is the earliest authority on the 'Ilm al-Faráïz, and may be called the

[1] A Digest of Mohummudan Law, according to the tenets of the twelve Imams, compiled under the superintendence of Sir William Jones, extended so as to comprise the whole of the Imameea code of jurisprudence in temporal matters, and translated from the original Arabic, by order of the Supreme Government of Bengal, by Captain John Baillie. In 4 Vols. Vol. I. (all published). 4to. Calcutta, 1805.

father of the law of inheritance. Muhammad is reported to have said to his followers, "The most learned among you in the laws of heritage is Zaid;" and the Khalífahs 'Umar and 'Usmán considered him without an equal as a judge, a jurisconsult, a calculator in the division of inheritances, and a reader of the Kurán.[1]

The Imám Muwaffik ad-Dín Abí 'Abd Allah Muhammad Ben 'Alí ar-Rahabí, surnamed Ibn al-Mutakanmah, wrote a short treatise, entitled the Bighyat al-Báhis, consisting of memorial verses, which are nearly unintelligible from their conciseness, and which give an epitome of the law of inheritance according to the doctrine of Zaid Ben Sábit. This doctrine, which was partly exploded by Abú Hanífah, is still looked upon with respect by all writers on Faráïz: it cannot, however, be said, so far as we know, to belong to any particular sect, unless, indeed, it be that of Ash-Sháfi'í, who, it seems, took Zaid Ben Sábit for his chief guide. For this reason I place the Bighyat al-Báhis as the first in order of these separate works on the 'Ilm al-Faráïz, although I have not been able to ascertain the period when its author flourished.

Sir William Jones published the text of the Bighyat al-Báhis, accompanied by a literal translation, which is almost as obscure as the original.[2] In the Preface to this work the learned translator falls into error, by stating, that as the author "was himself an Imam, his decisions on that account are considered binding by the sect of Ali, which the Indian as well as the Persian Mahomedans profess."[3] Now, setting aside the fact that the Shí'ah faith has never at any time had great weight in India, where, even at Lakhnau, "the seat of

[1] De Slane in Ibn Khall. Vol. I. p. 372, note 2. An-Nawawí. p. ٣٥٩.

[2] بغيت الباحث The Mohammedan Law of Succession to the Property of Intestates, in Arabick; with a Verbal Translation and Explanatory Notes. By William Jones, Esq. 4to. Lond. 1782. Sir William Jones' Works, Vol. III. p. 467. 4to. Lond. 1799.

[3] Sir W. Jones' Muhammadan Law of Succession, Preface.—Sir W. Jones' Works, Vol. III. p. 470. 4to. Lond. 1799.

heterodox Majesty itself," the tenets of the Sunnís are adhered to,[1] the mere circumstance of Ibn al-Mutakannah being denominated "Al-Imám," would be in itself sufficient to prove that he was *not* a Shí'ah writer, since that title, as we have seen, is considered by the Shí'ahs to be sacred, and is never applied by them to any other than 'Alí and his immediate descendants. Moreover, the 8th, 9th, and 10th pages of the Bighyat al-Báhis,[2] if they can be construed to mean any thing, seem to point at the doctrine of the Increase—a doctrine which is not admitted by the Shí'ah lawyers.

The highest authority on the law of inheritance amongst the Sunnís of India is the Sirájíyah, which is sometimes called the Faráïz as-Sajáwandí, and was composed by Siráj ad-Dín Muhammad Ben 'Abd ar-Rashíd as-Sajáwandí, but at what precise time is uncertain. The Sirájíyah has been commented upon by a vast number of writers, upwards of forty being enumerated in the Kashf az-Zunún.[3] The most celebrated of these Commentaries, and the one most generally employed to explain the text, is the Sharífíyah by Sayyid Sharíf 'Alí Ben Muhammad al-Jurjání, who died in A.H. 814 (A.D. 1411).[4]

The original text of the Sirájíyah, together with that of the Sharífíyah was published at Calcutta in A.H. 1245 (A.D. 1829).[5] A Persian translation of the Sirájíyah and Sharífíyah, by Maulaví Muhammad Ráshid, was made by order of Warren Hastings, in pursuance of his plan for rendering the native laws accessible to those to whom the administration of justice was intrusted; and although Sir William Jones has spoken in terms of disparagement of this translation,[6] it bears testimony to the active interest taken by the illustrious

[1] Macnaghten, Principles and Precedents of Moohummudan Law, Preface, p. xii.

[2] Sir W. Jones' Works, Vol. III. p. 499 *et seq.* 4to. Lond. 1799.

[3] Háj. Khalf. Tom. IV. p. 399. [4] Háj. Khalf Tom. IV. p. 401.

[5] الفرايض السّجاوندي 8vo. Calc. A.H. 1245 (A.D. 1829).

[6] Sir W. Jones' Works, Vol. III. p. 508. 4to. Lond. 1799.

Governor-General in the welfare and happiness of the Musulmán portion of the population of India. The text of this Persian version was published at Calcutta in the year 1812[1] by Muhammad Ráshid. The text and translation of the Sirájíyah, together with an abstract of the Sharífíyah, published by Sir William Jones, are well known.[2] The learned Judge has executed his task with his accustomed ability; but although he blames, with apparent reason, the diffuseness of the Persian translator, it may be doubted whether he himself has not erred in the opposite extreme. Mr. Neil Baillie has well observed of Sir William Jones' translation: "The Sirajiyyah is very brief and abstruse; and without the aid of a Commentary, or a living teacher to unfold and illustrate its meaning, can with difficulty be understood even by Arabic scholars. It is therefore not a matter of surprise that its translation by Sir William Jones should be almost unknown to English lawyers, and be perhaps never referred to in His Majesty's Supreme Courts of Judicature in India. With the assistance of the Shureefeea, it is brought within the reach of the most ordinary capacity; and if the abstract translation of that Commentary, for which we are also indebted to Sir William Jones, had been more copious, nothing further would have been requisite to give the English reader a complete view of this excellent system of inheritance."[3] Mr. Baillie himself subsequently supplied this desideratum by his admirable treatise on the law of Muhammadan Inheritance, which will be noticed hereafter in speaking of the European works on the Muhammadan law. Until the appearance of this last treatise, Sir William Jones' translation of the Sirájíjah was undoubt-

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[1] فرايض سراجيّه فارسي با فوايد شريفيّه ترجمه كرده مولوي محمّد راشد 8vo. Calc. A.H. 1227 (A.D. 1812).

[2] Al-Sirájiyyah, or the Mohammedan Law of Inheritance, with a Commentary by Sir William Jones. Fol. Calcutta, 1792. (Text and Translation.) Sir W. Jones' Works, Vol. III. p. 503. 4to. Lond. 1799.

[3] Baillie's Moohummudan Law of Inheritance. Introduction, p. i.

edly of considerable utility to the English Judge, as supplying in a great measure the omission in the Hidáyah; but it has been quite superseded by Mr. Baillie's clear and comprehensive exposition of this intricate and important branch of the Muhammadan law.

The most celebrated Commentaries on the Sirájíyah next after the Sharífíyah, although perhaps not much known in India, may be here noticed. These are, that by Shiháb ad-Dín Ahmad Ben Mahmúd as-Síwásí, who died in A.H. 803 (A.D. 1400), and which has a great and general reputation; one by Burhán ad-Dín Haidar Ben Muhammad al-Harawí, who died about A.H. 830 (A.D. 1426), which is famous for being of great excellence, though small in volume;[1] another by Shams ad-Dín Muhammad Ben Hamzah al-Fanárí, who died in A.H. 834 (A.D. 1430), and whose work is considered to be one of the best of the glosses on the Sirájíyah;[2] and lastly, a Persian Commentary entitled Al-Faráïz at-Tájí fí Sharh Faráïz as-Siráji, by 'Abd al-Karím Ben Muhammad al-Hamadání.[4]

Burhán ad-Dín al-Marghínání, the author of the Hidáyah, also wrote a work on Inheritance entitled the Faráïz al-'Usmání, which has been illustrated by several comments.[5]

The Faráïz-i Irtizíyah is a concise treatise in Persian on the law of Inheritance, which appears to be the principal authority of that law in the Dakhin:[6] its author is Irtizá 'Alí Khán Bahádur. The Faráïz-i Irtizíyah was printed at Madras in 1825.[6]

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[1] Háj. Khalf. Tom. IV. p. 400. [2] Háj. Khalf. Tom. IV. p. 401.
[3] Háj. Khalf. Tom. IV. p. 404. [4] Háj. Khalf. Tom. IV. p. 405.

[5] M. Eugène Sicé mentions this work as an authority amongst the *Shí'ahs* of Pondichéry; but he has given extracts from it, quoting the opinions of the Sunní Imáms, which sufficiently prove that it cannot be considered as a guide by any of the true followers of 'Alí. – See the Journal Asiatique, 3me Série. Tome XII. p. 185 *et seq.*

[6] فرايض ارتضيه Furaiz-i Irtizeeah, a treatise on the Mohummedan law of Inheritance. By Moulavee Mohummud Irtuza Alee Khan Bahadoor Mooftee of the Court of Sudr and Foujdaree Udalut at Fort St. George. Fol. Madras, 1825.

The following separate treatises on the law of Inheritance according to Ash-Sháfi'í's doctrine may be mentioned:—Al-Faráïz al-Fárikíyah, by Shams ad-Dín Muhammad Ben Killáyí, who died in A.H. 777 (A.D. 1375). The Faráïz al-Fazárí, by Burhán ad-Dín Abú Ishák al-Fazárí, commonly alled Ibn Firkáh, who died in A.H. 729 (A.D. 1328). The Faráïz al-Mutawallí, by Abú Sa'íd 'Abd ar-Rahman Ben Mámún al-Mutawallí, who died in A.H. 478 (A.D. 1085); and the Faráïz al-Mukaddasí, by Abú al-Fazl 'Abd al-Malik Ben Ibráhím al-Hamadání al-Mukaddasí, and Abú Mansúr 'Abd al-Káhir al-Baghdádí, who died respectively in A.H. 489 and 429 (A.D. 1095 and 1037).[1]

The earliest treatises on the 'Ilm al-Fáráïz by Shí'ah writers appear to have been written by 'Abd al-'Azíz Ben Ahmad al-Azadí, and Abú Muhammad al-Kindí, the latter of whom lived in the reign of Hárún ar-Rashíd. The best known and most esteemed are the Ihtijáj ash-Shí'ah, by Sa'd Ben 'Abd Allah al-Ash'arí, who died in A.H. 301 (A.D. 913); the Kitáb al-Mawáris, by Abú al-Hasan 'Alí Ben Bábawaih; and the Hamal al-Faráïz, and the Faráïz ash-Shar'íyah, by the Shaikh Mufíd.

Abú Ja'far Muhammad at-Túsí, who, in addition to his general works on the Kurán, the Hadís, and jurisprudence, wrote separate treatises on almost every branch of Shí'ah law, has left a work on Inheritance entitled Al-Íjáz fí al-Faráïz.

A very complete treatise in the Persian language on the Shí'ah law of inheritance was printed in lithography at Lakhnau in 1841.[2] It is an extract from a larger work, entitled the Rauzat al-Ahkám by Sayyid Husain. This treatise well deserves translation; for although it presents all the peculiar

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[1] Háj. Khalf. Tom. IV. pp. 408, 410.

[2] رساله متعلق باحكام مواريث جزويست از مقصد رابع كتاب مستطاب روضة الاحكام 8vo. Lakhnau, A.H. 1257 (A.D. 1841).

difficulties attendant on the mode of treatment adopted by the Muhammadan lawyers, it is very full and satisfactory.

Another treatise on Inheritance, which I have not seen, but believe to be according to the Shí'ah tenets, entitled Kitáb 'Ilm al-Faráïz, was lithographed at the same place in the year 1847.[1] It is in the Urdú language, and the author is Mullá 'Ináyat Ahmad.[1]

V. Having described to this extent the comments on the Kurán, the books of traditions, and the general and particular treatises on jurisprudence and special laws of the different sects, the fifth class of works, which treat of the 'Ilm al-Fatáwa, or science of decisions, remains to be noticed. These are very numerous, amounting to several hundreds: the greater portion, however, are either unknown, or never used in India.

Almost all these collections have the title of Fatáwa, but some appear under other designations. Some give the decisions of particular lawyers, or those found in particular books; others, those which tend to illustrate the doctrines of the several sects; whilst others again are devoted to recording the opinions of learned jurists, who were natives or residents of certain places, or lived at certain times. It will be necessary here to mention only a few of these works.

The Khulásat al-Fatáwa by the Imám Iftikhár ad-Dín Táhir Ben Ahmad al-Bukhárí, who died in A.H. 542 (A.D. 1147), is a select collection of decisions of great authority.[2] Iftikhár ad-Dín was also the author of the Khizánat al-Wáki'át, and the Kitáb an-Nisáb, on which books the Khulásat was grounded, and to which many subsequent collections of decisions are indebted for numerous valuable cases.

The Zakhírat al-Fatáwa sometimes called the Zakhírat al-Burháníyah, by Burhán ad-Dín Ben Mázah al-Bukhárí, the author of the Muhít al-Burhání, is also a celebrated, though not a large collection of decisions, principally taken from the Muhít.[3]

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[1] كتاب علم الفرائض 8vo. Lakhnau, A.H. 1264 (A.D. 1847).

[2] Háj. Khalf. Tom. III p. 165. [3] Háj. Khalf. Tom. III. p. 327.

The Fatáwa Kází Khán, or collection of decisions of the Imám Fakhr ad-Dín Hasan Ben Mansúr al-Uzjandí al-Farghání, commonly called Kází Khán, who died in A.H. 592 (A.D. 1195), is a work held in the highest estimation in India, and indeed is received in the Courts as of equal authority with the Hidáyah of Burhán ad-Dín 'Alí, with whom Kází Khán was a contemporary; it is replete with cases of common occurrence, and is therefore of great practical utility, the more especially as many of the decisions are illustrated by the proofs and reasoning on which they are founded. Yúsuf Ben Junaid, generally known by the name of Akhí Chalabí at-Túkátí, epitomised Kází Khán's work, and compressed it into one volume.[1]

The Fatáwa Kází Khán was lithographed and published in the original at Calcutta in the year 1835.[2]

The Fatáwa az-Zahíríyah was written by Zahír ad-Dín Abú Bakr Muhammad Ben Ahmad al-Bukhárí, who died in A.H. 619 (A.D. 1222). His decisions were collected partly from the Khizánat al-Wáki'át, and his work has again become one of the bases of other collections. Badr ad-Dín Abú Muhammad Mahmúd Ben Ahmad al-'Ainí, who died in A.H. 855 (A.D. 1451), compiled a collection selected from this and other old works of the same nature, entitled the Masáïl al-Badríyah.[3]

The Fusúl al-Isturúshí[4] was written by Muhammad Ben Mahmúd, commonly called Al-Isturúshí, in A.H. 625 (A.D. 1227), and is principally restricted to decisions respecting mercantile transactions.

The Fusúl al-'Imádíyah, by Abú al-Fath Muhammad Ben

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[1] Háj. Khalf. Tom. IV. p. 365.

[2] فتاوي قاضيخان در فقه حنفي Futawa Qazee Khan on the Institutes of Aboo Huneefa. Edited by Moulvee Mohummud Mooraud, Moulvee Hafiz Ahmud Kubeer, Moulvee Mohummud Soliman, Moulvee Ghollam Issa, and Moulvee Tumeezoodeen Aizanee. 4 Vols. 8vo. Calcutta.

[3] Háj. Khalf. Tom. IV. p. 362.

[4] Háj. Khalf. Tom. IV. p. 432.

Abú Bakr al-Marghínání as-Samarkandí, was composed in A.H. 651 (A.D. 1253).[1] It comprises forty sections containing decisions respecting mercantile matters, and, being left incomplete at the author's death, was finished by Jamál ad-Dín Ben 'Imád ad-Dín.

The Fusúl al 'Imádíyah was lithographed and published in the original at Calcutta in the year 1827.[2]

These two last-mentioned works were incorporated in a collection entitled the Jámi' al-Fusúlain,[3] which is a work of some celebrity: it was composed by Badr ad-Dín Mahmúd, known by the name of Ibn al-Kází Simáwanah, who died in A.H. 823 (A.D. 1420).

The Kunyat al-Munyat is a collection of decisions of considerable authority by Mukhtár Ben Mahmúd Ben Muhammad az-Záhidí Abú ar-Rijá al-Ghazmíní, surnamed Najm ad-Dín, who died in A.H. 658 (A.D. 1259).[4]

The original text of the Kunyat al-Munyat was published at Calcutta in the year 1829.[5]

An-Nawawí, the author of the Biographical Dictionary the Tahzíb al-Asmá, who died in A.H. 677 (A.D. 1278), made a collection of decisions of some note, which is called the Fatáwa an-Nawawí. He also composed a smaller work of the same nature, entitled 'Uyún al-Masáïl al-Muhimmat, arranged in the manner of question and answer.[6]

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[1] Háj. Khalf. Tom. IV. p. 440.

[2] فتاوي فصول الاحكم في اصول الاحكم المعروف بفصول عمادي من مولّفات علامة الدّهر فهامة العصر الجهبذ الاكرم الاستاد الاعظم مورد نزول مزاحم الرّبّاني ابي الفتح بن ابي بكر بن عبد الجليل المرغيناني 2 Vols. 8vo. Calc. A.H. 1243 (A.D. 1827).

[3] Háj. Khalf. Tom. II. p. 562.

[4] Háj. Khalf. Tom. IV. p. 572.

[5] النسخة المسمّاة بالفنية المنية لتتميم الغنية من تصانيف مختار بن محمود بن محمّد الزّاهدي ابي الرّجا الغزميني الامام العلامة الملقّب بنجم الدّين 4to. Calc. A.H. 1245 (A.D. 1829).

[6] Háj. Khalf. Tom. IV. pp. 292, 369. Wüstenfeld, Ueber das Leben und Schriften des Scheich el-Nawawi, pp. 53, 54.

The Khizánat al-Muftiyín, by the Imám Husain Ben Muhammad as-Sam'áni, who completed his work in A.H. 740 (A.D. 1339),[1] contains a large quantity of decisions, and is a book of some authority in India.

The Khizánat al-Fatáwa, by Ahmad Ben Muhammad Ben Abí Bakr al-Hanafí,[2] is a collection of decisions made towards the end of the eighth century of the Hijrah, and comprises questions of rare occurrence. It is known and referred to in India.

The Fatáwa Tátárkháníyah was originally a large collection of Fatwas in several volumes, by the Imám 'Álim Ben 'Alá al-Hanafí, taken from the Muhít al-Burhání, the Zakhírat, the Kháníyah, and the Zahíríyah. Afterwards, however, a selection was made from these decisions by the Imám Ibráhím Ben Muhammad al-Halabí, who died in A.H. 956 (A.D. 1549), and an epitome was thus formed, which is in one volume, and still retains the title of Tátárkháníyah.[3]

The Fatáwa Ahl Samarkand is a collection of the decisions of those learned men of the city of Samarkand who are omitted, or lightly passed over, in the Fatáwa Tátárkháníyah and the Jámi' al-Fusúlain,[4] to both of which works it may be considered a supplement.

The Fatáwa az-Zainíyah contains decisions by Zain al-'Ábidín Ibráhím Ben Nujaim al-Misrí, the author of the Bahr ar-Ráïk and the Ashbah wa an-Nazáïr. They were collected by his son Ahmad about A.H. 970 (A.D. 1562).[5]

The Fatáwa-i Ibráhím Sháhí, by Shiháb ad-Dín Ahmad was composed by order of Ibráhím Sháh of Júnpúr, in the ninth century of the Hijrah. It is known in India, but it is not considered to be of much authority.[6]

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[1] Háj. Khalf. Tom. III. p. 136.

[2] Háj. Khalf. Tom. III. p. 135. Harington's Analysis, p. 230, n. 1. 2d edit.

[3] Háj. Khalf. Tom. II. p. 90.

[4] Háj. Khalf. Tom. IV. p. 354.

[5] Háj. Khalf. Tom. IV. p. 357. He erroneously calls the author Zain ad-Dín.

[6] Harington's Analysis, p. 241. 2d edit.

The Tanwír al-Absár, by the Shaikh Shams ad-Dín Muhammad Ben 'Abd Allah al-Ghazzí, who composed this work in A.H. 995 (A.D. 1586), is enriched with a variety of questions and decisions, and seems to come within the present class of law-books. It is considered to be one of the most useful books according to the Hanafí doctrines, and has been frequently commented upon.[1] The most noted of these commentaries are, the Manh al-Ghaffár, which is a work of considerable extent, by the author of the Tanwír al-Absár himself;[2] and the Fatáwa Durar al-Mukhtár, which was written in A.H. 1071 (A.D. 1660), by Muhammad 'Alá ad-Dín Ben Shaikh 'Alí al-Hiskafí. Both these commentaries contain a multitude of decisions, and are well known in India.

A Persian translation of the book on Ta'zírát, from the Durar al-Mukhtár, was made, by order of Mr. Harington, by Maulavi Muhammad Khalíl ad-Dín, and printed and published at Calcutta in the year 1813;[3] and a lithographed edition of the original Arabic text of the whole work appeared in the same city in the year 1827.[4] Another edition of the Durar al-Mukhtár was printed at Calcutta in 1846.[5]

A note book, or Háshíyat, entitled the Háshíyat at-Tahtáwí 'ila Durr al-Mukhtár, was printed and published at Búlák, in the year 1839;[6] but I have not seen it, and am not aware whether it be explanatory of the work of Al-Hiskafí or of some other treatise bearing a similar title.

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[1] Háj. Khalf. Tom. II. p. 453.

[2] See the Preface to the Persian translation of the book on Ta'zírát, from the Durr al-Mukhtár.

[3] نسخه ترجمهٔ تعزيرات كتاب درّ المختار از مولوي محمّد خليل الدّين 8vo. Calc. A.H. 1228 (A.D. 1813).

[4] فتا درّ المختار في شرح تنوير الابصار من مؤلّفات قدوة الفضلاء الاعلام زبدة الفقهاء العظام مولانا محمّد علاء الدّين الحسكفي بن الشّيخ علي الامام بجامع بني اميّه 8vo. Calc. A.H. 1243 (A.D. 1827).

[5] فتاوي درر المختار في شرح تنوير الابصار 4to. Calcutta, A.H. 1263. (A.D. 1846).

[6] حاشيّة الطحطاوي علي درّ المختار Búlák, A.H. 1254 (A.D. 1839).

Of the collections of decisions now known in India, none is so constantly referred to, or so highly esteemed, as the Fatáwa al-'Álamgírí; and although, as has been stated, the Fatáwa Kází Khán is reckoned to have an equal authority with the Hidáyah, it is neither so generally used nor so publicly diffused as the Fatáwa al-'Álamgírí. The latter work, from its comprehensive nature, is applicable in almost every case that arises involving points of Hanafí law, and is on that account produced and quoted as an authority, almost every day, in the Courts in India. The Fatáwa al-'Álamgírí was commenced in the year of the Hijrah 1067 (A.D. 1656),[1] by order of the Emperor Aurangzéb 'Álamgír, by whose name the collection is now designated. It contains a bare recital of law cases, without any arguments or proofs; an omission which renders it defective for elementary instruction. The immense number of cases, however, compensate in some measure for this want, which is, moreover, supplied by the Hidáyah, and other works; and the insertion of argument can the more readily be dispensed with, since the opinions of the modern compilers could not have been esteemed of equal authority with those of the older writers on jurisprudence; and the mere decisions, without comment or explanation, are equally applicable to particular cases, when illustrated and explained by reference to works of authority as text books. The Fatáwa al-'Álamgírí was translated into Persian by order of 'Álamgír's daughter, Zéb an-Nisá.

The original Arabic text of the Fatáwa al-'Álamgírí was printed and published at Calcutta in the year 1828, in six large quarto volumes.[2]

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[1] Harington's Analysis, Vol. I. p. 241. 2d edit.

[2] الفتاوي العالمكيريّة في الفروع الحنفيّة Futawa Alemgiri; a collection of Opinions and Precepts of Mohammedan Law. Compiled by Sheïkh Nizam, and other learned men, by command of the Emperor Aurungzeb Alemgir. 6 Vols. 4to. Calcutta, 1828.

A translation into Persian of the books on Jináyát and Hudúd, from the Fatáwa al-'Álamgírí, was made, by order of the Council of the College of Fort William at Calcutta, by the Kází al-Kuzát Muhammad Najm ad-Dín Khán, and was published in the year 1813, together with a Persian treatise on Ta'zírát, by the same author, in the same volume with the translation of the book on Ta'zírát from the Fatáwa Durr al-Mukhtár already mentioned.[1]

Mr. Neil Baillie, has recently published a translation of selected portions from two books of the Fatáwa al-'Álamgírí that comprise the whole subject of sale.[2] "The rule adopted in making the selections," says Mr. Baillie, "was to retain everything of the nature of a general proposition, but to reject particular cases, except when they were considered to involve or illustrate some principle or maxim of law."[3] The translator has executed his task in a most able manner, and, by preserving the division and arrangement of the original into chapters and sections, has rendered reference to the Arabic text a matter of no difficulty to the Oriental scholar. He has added throughout explanatory notes, which might, perhaps, have been extended with profit to the student. This work is a most important addition to the translated treatises on Muhammadan Law; and, being printed at the public expense, affords an additional instance of the reiterated and judicious liberality of the Honourable Court of Directors in patronising works tending to benefit India.

The Fatáwa al-Ankirawí, a collection of the decisions of

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[1] نسخهٔ ترجمهٔ کتاب الجنایات فتاوي عالمکیري از جناب قاضي القضاة محمّد نجم الدّین خان مع کتاب الحدود فتاواي مذکور و رسالهٔ تعزیرات مؤلّفه جناب ممدوح 8vo. Calc. A.H. 1228 (A.D. 1813).

[2] The Moohummudan Law of Sale, according to the Huncefeea Code, from the Futawa Alumgeeree. Selected and translated from the Arabic, by Neil Baillie. 8vo. Lond. 1850.

[3] Baillie's Moohummudan Law of Sale, Preliminary Remarks, p. xvi.

Al-Ankirawí, by the Shaikh al-Islám Muhammad Ben al-Husain, who died in A.H. 1098 (A.D. 1686), is according to the doctrine of Abú Hanífah, and is a work of great authority.[1]

The Futáwa Hammádíyah was composed by Abú al-Fath Rukn ad-Dín Ben Husám an-Núgúrí, and dedicated to his tutor, Hamád ad-Dín Ahmad, chief Kází of Nahr Waláh. This work is a modern compilation, though its date has not been precisely ascertained, and is of considerable authority.

The Fatáwa Hammádíyah was lithographed, and published in the original Arabic at Calcutta in 1825.[2]

The Fatáwa as-Sirájíyah is a collection of decisions on rare cases, which do not often occur in other books. Mr. Baillie, in his treatise on Inheritance, has constantly referred to this work as an authority. An edition of the original text was published at Calcutta in 1827.[3]

Típú Sultán ordered a collection of Fatwas to be compiled in Persian by a Society of the 'Ulamá of Mysore. It comprises three hundred and thirteen chapters, and is entitled the Fatáwa-i Muhammadí.[4]

The following works of the present class, published at Constantinople, and containing decisions according to the doctrine of Abú Hanífah, may be noticed.

A collection of Fatwas, in the Turkish and Arabic languages, entitled the Kitáb fí al-Fikh al-Kadúsí, composed by Háfiz Muhammad Ben Ahmad al-Kadúsí, in A.H. 1226 (A.D. 1808).[5] It was published in 1821.[6]

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[1] Háj. Khalf. Tom. IV. p. 354.

[2] نسخة فتاوي حمّاديّه در علم فقه من مؤلّفات مولانا ابو الفتح ركن الدّين بن حسام التّاكوري 2 Vols. 8vo. A.H. 1241 (A.D. 1825).

[3] كتاب الفتاوي السّراجيّة 8vo. Calc. A.H. 1243 (A.D. 1827).

[4] Stewart's Catalogue of the Library of Tippoo Sultan, p. 157, No. XCII.

[5] A description of this work by M. Bianchi will be found in the fourth volume of the Journal Asiatique, p. 171 *et seq.*

[6] كتاب في الفقه الكدوسي 4to. Const. A.H. 1237 (A.D. 1821).

The Fatáwa-i 'Abd ar-Rahím Effendí is a collection of judgments pronounced at various times in Turkey, and collected by the Muftí 'Abd ar-Rahím. It was printed in the year 1827.[1]

Dabagzádeh Nu'mán Effendí is the author of a collection of sixteen hundred and seventy decisions, which is entitled the Tuhfat as-Sukúk, and was published in the year 1832.[2]

The Jámi' al-Ijáratín is a collection of decisions relating to the law of farming and the tenure of land, by Muhammad 'Árif. It was printed in the year 1836.[3]

A collection of Fatwas relating to leases was published at Constantinople, by M. D'Adelbourg, in the year 1838.[4] Prefixed to this collection are the principles of the law of lease, according to the Multaka; and it is followed by an analytical table, facilitating reference to the various decisions.

There are several collections of decisions according to the doctrine of Ash-Sháfi'í. The one most esteemed seems to be the Fatáwa Ibn as-Saláh, by Abú 'Umrú 'Usmán Ben 'Abd ar-Rahman ash-Sháhrazúrí, commonly called Ibn as-Saláh, who died in A.H. 642 (A.D. 1244).[5] Ibn Firkáh, who has been already spoken of as the author of the Fáráïz al-Fazárí, a treatise on Inheritance, also made a collection of decisions, according to the same doctrine, which is called, after his name, the Fatáwa Ibn Firkáh.[6]

A few other collections of Fatáwa are mentioned by Harington as being known in India, but I have not met with them, nor have I been able to gain any information as to their nature, beyond what he has stated. Of three of these he merely gives

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[1] فتاوي عبد الرّحيم افندي 2 Vols. folio. Const. A.H. 1243 (A.D. 1827).

[2] تحفة الصّكوك 4to. Const. A.H. 1248 (A.D. 1832).

[3] جامع الاجارتين 8vo. Const. A.H. 1252 (A.D. 1836).

[4] Recueil de Fetvas, ou decisions de la Loi Musulmane, concernant le contrat de louage. Par E. D'Adelbourg. 4to. Const. 1838.

[5] Háj. Khalf. Tom. IV. p. 350. [6] Háj. Khalf. Tom. IV. p. 351.

the titles; viz. the Fatáwa-i Buzázíyah, the Fatáwa-i Nakhshbandíyah, and the Mukhtár al-Fatáwa.[1] A fourth, the Fatáwa-i Karákhání, he describes as a Persian compilation, the cases included in which were collected by Mullá Sadr ad-Dín Ben Ya'kúb, and arranged some years after his death by Karáa Khán, in the reign of Sultán 'Alá ad-Dín.[2]

Books of the fifth class according to the Shí'ah doctrines are very rare; and although many writers are distinguished by the description of having been great masters of the 'Ilm al-Fatáwa, or as Givers of decisions, I have only discovered two works that come expressly within this class. The first is the Mujarrad fí al-Fikh wa al-Fatáwa, by the Shaikh Abú Ja'far Muhammad at-Túsí, already so often mentioned; and the second is the Lam'ah-i Dimishkíyah, by the Shaikh Ash-Shahíd Abú 'Abd Allah Muhammad Ben Makkí ash-Sháfí, who was killed in A.H. 786 (A.D. 1384).

The origin of the latter work is stated to have been, that Sultán 'Alí Muayyid, who was the Ruler of Khurásán and a Shí'ah, sent to Syria, to request the Shaikh Abú 'Abd Allah to leave that country and proceed to Khurásán; whereupon the Shaikh excused himself, and having collected his decisions into the volume above-mentioned, sent the book to the Prince, instead of going himself.

There is a Commentary on the Lam'ah-i Dimishkíyah, by Zain al-'Abidín, entitled the Rauzat al-Bahíyat,[3] which is probably the same work as that referred to by 'Alí Hazín, in his Memoirs, by the name of Sharh-i Lam'ah-i Dimishkíyah.[4]

I may add, that Mr. Bland mentions a collection of decisions

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[1] Harington's Analysis, Vol. I. p. 236. 2d edit.

[2] Harington's Analysis, Vol. I. p. 240 note 1. 2d edit.

[3] Stewart's Catalogue of the Library of Tippoo Sultan, p. 151, No. XLIX.

[4] The Life of Sheikh Mohammed Alí Hazín. Persian text edited by Belfour, pp. ١٠ and ٥٢ 8vo. London, printed for the Oriental Translation Fund in 1831.

in his notice of the Oriental MSS. in the Library of Eton College,[1] which, from its title, Aurád-i Imámíyah, is most probably a Shí'ah work.

The preceding selection will, I believe, be found to comprise the greater part, if not the whole, of the Muhammadan law-books which are of any authority in India, together with a list of all the printed editions and translations. A short account of the original treatises by European authors, which are, unfortunately, very few in number, will close this enumeration of the writers on Muhammadan jurisprudence.

Sir William Hay Macnaghten's Principles and Precedents of Muhammadan law,[2] like every work of their accomplished author, are of the highest authority, and exhibit the accuracy and clearness of arrangement for which he was so eminently distinguished. The Precedents are of the greatest importance, and the original extracts from the Hidáyah, the Sharáï' al-Islám, the Sirájíyah, and the Sharífíyah, which he has subjoined as an Appendix, materially increase the value of his work.

Mr. Neil Baillie's excellent treatise on the law of Inheritance[3] is, as he himself modestly remarks, little more than a condensation of the Sirájíyah and Sharífíyah; but it is a condensation executed with much ability and judgment, and renders a very intricate subject perfectly intelligible. The passages in the original Arabic from the two works above mentioned as forming the basis of his treatise, together with others which he has added, will be consulted with advantage and gratification by the Arabic scholar.

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[1] Journal of the Royal Asiatic Society, Vol. VIII. p. 105.

[2] Principles and Precedents of Muhammadan Law, being a compilation of primary rules relative to the doctrine of Inheritance, Contracts, and Miscellaneous subjects; by W. H. Macnaghten, Esq. 8vo. Calcutta, 1825.

[3] The Moohummudan Law of Inheritance according to Aboo Huneefa and his followers; by Neil B. Baillie. 8vo. Calcutta, 1832.

A good abstract of Muhammadan law will be found in the Journal of the Royal Asiatic Society:[1] it is from the pen of Lieut. Colonel Vans Kennedy, and is well worthy the attention of the student.

Harington, in his Analysis of the Bengal Regulations, already so often quoted, has devoted a long chapter to the Criminal Law of the Musulmáns, as modified by the Regulations, which may be said, so far as it extends, almost to supersede reference to any other work on the subject.[2] This chapter on Criminal Law is introduced by a description of some of the law-books of the Muhammadans, being a reprint of the paper on the same topic inserted by Harington in the tenth volume of the Asiatic Researches.

Mr. Richard Clarke, in his abstract of the Bengal Regulations, forming the Sixth Appendix to the Minutes of Evidence taken before the Judicial Sub-Committee of the House of Commons in 1832,[3] has also given a clear and concise exposition of the Muhammadan Criminal Law.

The principles of this law, as it is now in force in Bengal, are laid down by Mr. Beaufort, in his Digest of the Criminal Law of the Presidency of Fort William; and the work on the Criminal Law of Madras, which was published by Mr. Baynes, Civil and Sessions Judge of Madura, in the year 1848, leaves nothing to be desired on the subject with regard to that Presidency.[4]

The proprietary right in the soil, about which so much has been written, seems hardly to come within the compass of the present account of the Muhammadan law. I cannot, however, forbear to mention the learned works of the late General Sir Archibald Galloway and General John Briggs,

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[1] Journal of the Royal Asiatic Society, Vol. II. p. 81.

[2] Harington's Analysis, Vol. I. p. 223 *et seq.* 2d edit.

[3] IV. Judicial, p. 665. 4to. edit.

[4] The Criminal Law of the Madras Presidency as contained in the existing Regulations and Acts. 8vo. Madras, 1848.

who have especially distinguished themselves by their researches on this difficult question.[1]

Of the works by Europeans that have appeared on the Continent treating of Muhammadan law, the Tableau de l'Empire Othoman, by Mouradjea D'Ohsson, is entitled to the first place. As I have already stated, it is founded almost entirely upon the Multaka of the Shaikh Ibráhím al-Halabí, and embodies a translation of the greater portion of that treatise. The introduction to the Civil Code is both interesting and valuable; but the Code itself is wanting in arrangement, and sometimes, unfortunately, even in accuracy. Mouradjea D'Ohsson did not live to complete his work, but it was finished by his son. If we consider the paucity of materials, and the backward state of Oriental learning in Europe at the time when it was composed, it must be allowed to reflect the highest credit upon its authors. It will always be referred to with profit by those who may turn their attention to Indian Muhammadan law, as exhibiting a practical exposition of the doctrine of Abú Hanífah and the two disciples, which obtains throughout the Turkish Empire.

In the year 1841 M. Eugène Sicé of Pondichéry published a treatise on the Muhammadan law as current in the Dakhin.[2] The author states that he compiled it from the Kanz, by Nasr Allah Ben Ahmad;[3] the Khulásat al-Ahkám, by Ahmad Abú al-Kásim Ben Ahmad al-Táya'tí; and the

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[1] Observations on the Law and Constitution and present Government of India, by Lieut. Col. Galloway, Chapter II. p. 32 *et seq.* 8vo. Lond. 1832. 2d edit. The present Land-tax in India, by Lieut. Col. John Briggs. Chapter III. p. 108 *et seq.* 8vo. Lond. 1830.

[2] Traité des Lois Mahométanes, ou Recueil des Lois, us et coutumes des Musulmans du Décan, par M. Eugène Sicé, de Pondichery. Journal Asiatique, 3me Serie. Tome XII. p. 149.

[3] The Kanz, of which M. Sicé promises an edition and translation, is probably the Kanz ad-Dakáik of Abú al-Barakát 'Abd Allah Ben Ahmad an Nasafí, which I have already spoken of in the third class of law-books according to the Sunní doctrines, *supra*, p. 291.

Faráïz-i Irtizíyah.[1] M. Sicé states that the Muhammadans of Pondichéry are *Shí'ahs*; but it is quite clear that no *real* Shí'ah would allow many of the doctrines laid down in his treatise, based as they are on the authority of the Sunní Imáms. He, however, mentions that they pay respect to the memory of Hasan and Husain; and he also quotes as an authority, in several places, a certain Imám Ja'far, who is very likely no other than Ja'far as-Sádik himself. It is probable that these so-called Shí'ahs of Pondichéry may be a kind of hybrid sect (not *true* Shí'ahs), who venerate 'Alí and his descendants, and at the same time, through ignorance, pay respect to the opinions of the great jurisconsults of the Sunnís, and even grant them the title of Imám.

A series of important papers on the Civil Code of the Sunnís was published by M. Du Caurroy in the Journal Asiatique; the first appeared in July 1848.[2]

M. M. Solvet and Bresnier published at Algiers, in the year 1846,[3] a treatise on the law of Inheritance according to the Máliki doctrine: it is an interesting little work, and the tabular statement of the shares taken by the concurrent heirs of a deceased, which it was written to illustrate, will be found of considerable practical utility.

A valuable and recondite contribution by Dr. Worms to the literary illustration of the proprietary right in the soil according to the Muhammadan law has appeared in the Journal Asiatique:[4] it is full of curious and varied information on the subject, taken from different authors; and as the

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[1] This work has been already noticed *supra*, p. 306.

[2] Législation Musulmane Sunnite, rite Hanèfi, par A. Du Caurroy. Journal Asiatique, 4me Série. Tome XII. p. 5.

[3] Notice sur les successions Musulmanes par Solvet et Bresnier, Alger, 1846, in 8vo.

[4] Recherches sur la constitution de la propriété territoire dans les pays Musulmans, et subsidiairement en Algérie, par M. le Docteur Worms. Journal Asiatique, 3me Série. Tome XIV. p. 225.

extracts are in almost every case accompanied by the original texts, a reference to a multitude of volumes, and to MSS. difficult of access, is spared to those Orientalists who may wish to investigate this most important and interesting topic.

In another volume of the same excellent periodical Mírzá Kásim Bég, Professor at the Imperial University of Saint Petersburg, has given an admirable account of the rise and progress of the jurisprudence of the Sunnís, displaying an intimate acquaintance with the subject, and great ability in its treatment.[1]

An announcement was made in the Annual Report of the Asiatic Society of Paris for the year 1848,[2] that M. Kasimirski de Bieberstein, the librarian of the Society, was occupied in the preparation of a Shí'ah Code of Law. M. Kasimirski has himself visited Persia, and his personal experience will thus enable him to supply practical information on the subject, which could not be furnished by those who have not enjoyed the same opportunities.

A volume entitled "Droit Musulman," forming the first section of a projected collection of ancient and modern codes in general, was published at Paris in 1849.[3] It is the joint production of MM. Joanny Pharaon and Théodore Dulau; but as M. Dulau informs us that the former gentleman knows but little law, and that he himself is entirely ignorant of Arabic (p. 473), it is scarcely necessary to state that the work is valueless as an authority. M. Pharaon, as it appears, is a voluminous writer on various subjects; amongst other productions, he has written a treatise on the French, Musulmán,

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[1] Notice sur la marche et les progrès de la Jurisprudence parmi les sectes orthodoxes Musulmanes; par Mirza Kazem Beg. Journal Asiatique. 4me Série, Tome XV. p. 158 *et seq.*

[2] Journal Asiatique, 4me Série, Tome XII. p. 120.

[3] Études sur les législations anciennes et modernes. Première Classe. Législations Orientales. Première partie. Droit Musulman. Par Joanny Pharaon et Théodore Dulau. 8vo. Paris, 1841.

and Jewish legislation at Algiers:[1] this last work I have not seen.

An important work on the Muhammadan law was published in Russian, at St. Petersburg, in the year 1850.[2] The author, M. Nicholas Tornau, has derived his work from original sources, and has embodied in it a quantity of information obtained by himself from living Muhammadan doctors: it comprehends both the Sunní and Shí'ah laws. This work has been since translated into German.[3]

Dr. S. Keijzer has lately published two works on the Muhammadan law which I believe complete the list of European authors on this subject up to present time.[4]

(3) Laws of the Portuguese, Armenians, Párasís, etc.

It is not an easy task to obtain accurate information with respect to many of the laws which come under this class. All of them depend, more or less, and in some instances entirely, upon arbitrary usage and customs, to which time has given the force of law.

The natives of India not comprised in the Hindú and Muhammadan classes, even when possessing a Code of laws of their own, rarely respect its provisions, and are generally ignorant of its application; and it is only by a diligent inquiry into the local customs upon which they rely that justice can be administered to them in our Courts according to their so-

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[1] De la legislation française, mussulmane et juive à Alger. 8vo. Toulon, 1835.

[2] Izloshénie Natchal Musulmansnago Zakonovèdèniya. (An Exposition of the Rudiments of Musulmán Jurisprudence.) 8vo. St. Petersburg, 1850.

[3] Das Moslemische Recht aus den quellen dargestellt von Nicolaus v. Tornauw. 8vo. Leipzig, 1855.

[4] Hand boek voor het Mohammedaansch regt, uitgegeven door Mr. S. Keijzer. 8vo. 's Gravenhage, 1855. Het Mohammedaansche Strafregt, naar Arabische, Javaansche en Maleische Bronnen, door S. Keyzer, 8vo. 's Gravenhage, 1857.

called systems of jurisprudence. Such being the case, the subject may be dismissed in a very few words, taking the different classes of natives *seriatim*.

The law of the Portuguese in India is the Roman Civil Law as current in Portugal,[1] but somewhat modified by local custom.

The Armenians of Bengal, in their petition, which I have quoted in a former page,[2] state that "no trace of their own law is now to be discovered:" and it appears to be an undoubted fact, that no peculiar Code of laws had been administered amongst them anywhere since they have ceased to be a nation.[3]

No Code whatever is alluded to in Father Chamich's History of Armenia; nor is the name or title of any author or work on law given by the learned Sukias Somal in his account of the literature of Armenia.[4]

Mr. Avdall, an Armenian gentleman well versed in the literature of his country, states, in a communication addressed to the Secretary of the Indian Law Commission,[5] that "two Codes of Armenian law have at different times been compiled. The first is said to have been compiled under the auspices of the Armenian King, Johannes Bagratian, about the year 1046, and is known only through the medium of a translation made

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[1] See Arth. Duck, De Usu et Authoritate Juris Civilis Romanorum per dominia principum Christianorum. Lib. II. cap. 7.

[2] *Supra*, p. 197.

[3] Leon the Sixth, the last of the Armenian Monarchs of the Cilicio-Armenian kingdom, which perhaps was never entirely independent, was taken prisoner by the Mamlúks of Egypt in A.D. 1375. He was released in 1382, but was not permitted to return to his own country, and wandered through Europe from place to place until his death, which happened at Paris in the year 1393. Vahram's Chronicle, translated by Neumann. Preface, p. xii. 8vo. Lond. 1831. Printed for the Oriental Translation Fund.

[4] Quadro della Storia Letteraria di Armenia. 8vo. Venezia, 1829.

[5] Special Reports of the Indian Law Commissioners, 1842, p. 457 note. And see with regard to the Armenian Laws the case of *Beglar v. Dishkoon*, I. Sevestre's Cases, p. 163 note.

into Latin, in the year 1548, by order of Sigismund the First, King of Poland, into whose territories a body of Armenians had emigrated in the eleventh century. The second is the compilation of Mechithar Ghosh, a learned Armenian, who flourished in the end of the twelfth and beginning of the thirteenth centuries. According to this writer there was, in his own times, a total absence of laws and law-books among the Armenians. A copy of this book exists at Venice; but neither of this, nor of the preceding Code, does any copy exist in India."

A few years since I was favoured with a communication on the subject of the Armenian laws by the Archbishop and Abbot-general of the Mechitaristan Monastery of San Lazzaro in Venice. The learned prelate distinctly stated to me that the Code of ancient Armenian laws no longer exists. He said, also, that the Armenians who were established at Leopolis in Poland in the eleventh century, carried with them the Armenian laws, which were there administered to them. He then mentioned the Latin translation made by order of King Sigismund, and the later compilation spoken of by Mr. Avdall; adding that there was a MS. of the former, and several of the latter work, in the library of the Monastery. He also referred to another Armenian work, which is a translation from the Greek, and is entitled "the Laws of Kings;" and he concluded, by stating emphatically, that the Armenians who remained in their own country lost not only their independence, but also their national laws; and that all those who emigrated have always been governed by the laws of the countries in which they have settled. The Archbishop, however, made the general reservation, that in ecclesiastical matters all Armenians are subject to the laws of the Armenian Church, as established by their ancient holy Fathers.

There is no doubt, therefore, that the Armenians at the present time have no actual laws especially applicable to them; and that decisions in cases to which they are parties can only be regulated in accordance with local usage.

The Párśís, who are now settled principally in Gujarát, and on the north coast of Bombay, are a large and influential class of natives, and are supposed to have first established themselves in India about the year 651, when the Sásánian monarchy was extinguished in Persia by the defeat and murder of Yazdajird, the last king of that race, and the fire-worship of Zartusht was supplanted by Islám.

On the establishment of the new creed, a large body of Persians emigrated from Kirmán to India, in order to practise peacefully the faith of their forefathers, and they are represented to have carried with them the ancient books of their religion and law. Such books, however, as are now extant relate almost exclusively to the doctrines and ceremonial observances of their religion; and there are no existing works which can be considered as forming a Code of laws properly so called.[1]

Their present law, if it deserve the name, consists of their national customs, preserved by immemorial usage, and many others borrowed from the Hindús, which are ascertainable only by reference to the Dustúrs, or Párśí priests, or to the Múbid, or head, or a Panchávyit, of the Cast, for as such they are considered in India, and they have adopted the Hindú method of referring disputed points to a Panchávyit.

The Act of the Legislative Council of India No. IX. of 1837, may be mentioned here as fixing the law with regard to Párśís in certain cases. By this Act it was declared, that

[1] Zend-Avesta, Ouvrage de Zoroastre, traduit en Français sur l'original Zend par Anquetil du Perron. 3 Tomes 4to. Paris, 1771.—M. Westergaard of Copenhagen, who has been long occupied in researches on the ancient languages of Persia, is preparing for publication a complete edition of so much of the Zendavesta as has been handed down to us. Some years since he undertook the voyage to Bombay for the purpose of collecting materials; and since then he has been diligently employed in the examination of the literary treasures of all the public libraries of Europe. M. Westergaard's work will be accompanied by a translation, a grammar of the two dialects of the Zend, and a complete concordance of the Zendavesta.

all immoveable property belonged to any Pársís, and situate within the jurisdiction of the Supreme Courts, should, as far as regards its transmission in cases of death or intestacy, be of the nature of chattels real, and not freehold.

The Sikhs do not appear to have any distinct system of jurisprudence: indeed, the religion itself of the followers of Nának can hardly be called an established belief. Its original elements were deism of a mystical tendency, contemplative worship, peace and goodwill, and amalgamation of Muhammadan and Hindú.[1] These principles have, however, become sadly degenerated in practice. The great distinction between the Sikhs and the other Hindús is the abolition of Cast; but the experiment has proved a most unsuccessful one, as it has caused, to use the words of Professor Wilson, "the extinction of many of the restraints which, in the more orthodox system, supply, however imperfectly, the want of a purer code of faith and practice."[2] The sacred books of the Sikhs contain no systematic exposition of doctrine, and but few practical rules of conduct; being for the most part of a mystical or moral purport.[3] Their laws, if they may be so termed, are adaptations of the Hindú system, and depend entirely upon usage, and not upon any written Code.

I am not aware that the Jain laws have ever been treated of by any European author, or that their legal writings have ever been consulted or examined. In some rare instances, however, when cases have arisen involving questions of Jain law, the Hindú law officers of the Courts have given their opinions, professedly founded on a reference to the Jain

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[1] A Summary Account of the Civil and Religious Institutions of the Sikhs. By Professor H. H. Wilson. Journal of the Royal Asiatic Society. Vol. IX. p. 43.

[2] Ib. p. 58.

[3] Ib. p. 45. And see, for an account of the sacred books of the Sikhs, and some translated extracts therefrom, A History of the Sikhs, by J. D. Cunningham. Append. I. II. III. and IV. p. 345 *et seq.* 8vo. Lond. 1849.

Sástras. What these Sástras are I have not been able to ascertain.

An abstract translation of the Burmese Code of laws, entitled Damasat, or the Golden Rule, appeared in the year 1833.[1] The Damasat seems to be of considerable antiquity, and presents many analogies with the Hindú law; the abstract, however, is only sufficient to give a general view of the system.

Dr. Rost has, I believe, been for some time engaged in preparing an edition of a Code of Buddhist laws in the Páli language, under the auspices and at the expense of the late Earl of Ellesmere. The existence of this Code was not known to Europeans until it was discovered by Dr. Rost among the MSS. preserved in the Brstish Museum. It is said to have been promulgated in the fifth century of our Æra; but it is a question how far it is Buddhistical in its origin; and the name of its reputed author, Manusara, would of itself lead us to infer that it is founded on the Institutes of Manu, even if the fact were not abundantly proved by an inspection of its form and contents. This Páli Code is accompanied by a translation and commentary in the Burmese language, adapting its provisions to the wants of more recent times, and appears to be the text book of the Burmese Courts of Law, as well as those of the other Buddhist nations who inhabit the extra-Gangic peninsula.

The laws of China, also a Buddhist country, have been made known by the learned labours of Sir George Staunton, who, in his translation of the Ta Tsing Leu Lee,[2] has presented us with the fundamental laws of the Chinese, and a selection from their Penal Code. The Leu Lee is held in the highest veneration in the Celestial Empire, and comprises a general

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[1] A description of the Burmese Empire, by Father Sangermano, p. 182. 4to. Rome, printed for the Oriental Translation Fund, in 1833. And see Symes' Embassy to Ava, p. 303 *et seq.* 4to. Lond. 1800.

[2] Ta Tsing Leu Lee; being the Fundamental Laws, and a Selection from the Supplementary Statutes of the Penal Code of China; translated from the original Chinese by Sir G. T. Staunton, Bart. 4to. Lond. 1810.

Code of laws, Civil, Fiscal, Ritual, Military, and Criminal, together with such as are relative to public works.

The Javan law is divided into two departments, that depending upon the Muhammadan law, and that which rests upon custom and tradition: the former called Hukm Allah, and the latter Yúdha Nagára. The Muhammadan law decisions are guided by the Arabic works on law, or rather by a collection of opinions extracted from them, and translated into the Javan language. The law of custom is chiefly handed down in oral tradition, but is also contained, in a great measure, in two works, one by Júgul Múdah Páteh, which is computed to be about six hundred years old, and another by Rája Kápa. The first compilation of the Javan laws, in which they were somewhat blended with the Muhammadan jurisprudence, was made by order of the first Musulmán prince of Demák. Another work of this description which is in high estimation is the Súria Alam: it will be found translated into English in Sir Stamford Raffles' History of Java.[1] In the latter work there is also an abstract of some of the laws said to have been in force in the earliest periods to which Javan tradition refers.[2] The proclamations, and the laws and regulations of the Sovereign, form another source of deviation from the Muhammadan law. Collections of these have been committed to writing.[3]

It is not probable that the Hebrew laws, grafted by the Rabbinical writers on the Code contained in the Old Testament, will ever be received or administered in India: those, however, who are curious in the matter, will find ample information as to the Jewish laws of succession and marriage in the works of the learned Selden.[4]

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[1] Raffles' History of Java, Vol. II. Appendix, C. p. xxxviii. 8vo. Lond. 1830. 2d edit.

[2] Ib. Appendix, C. p. li.

[3] Ib. Vol. I. pp. 312, 313.

[4] J. Seldeni Uxor Ebraica, seu de Nuptiis et Divortiis ex Jure Civili veterum Ebræorum, Libri Tres, Ejusdem De Successionibus ad Leges Ebræorum in Bona defunctorum. Edit. nov. 4to. Francof. 1695.

In addition to the above, several races, as the Khonds and some others, might be ranged under the present head; but these have no pretension to laws of their own.

It is evident, from this rapid sketch, that the class of natives of India who are neither Hindús nor Muhammadans rely in most instances almost entirely upon custom; that they are either destitute of particular laws; that such laws are unknown or forgotten, or laid aside; or lastly, that they have adopted modifications of the Hindú and Musulmán systems of jurisprudence.

Such is the present state of things; and the uncertainty caused by it, which has called forth the express complaint of the more influential portion of this class of natives, seems to require the interference of the legislature.

CHAPTER VI.

Account of the Reports of Decided Cases.

So long ago as the year 1813 Mr. Dorin remarked on the necessity of establishing the authority of precedent in India in the following words—"I think it should be enacted by a Regulation, that from a given period, the judgments of the Court shall be considered as precedents binding upon itself and on the inferior Courts in similar cases which may arise thereafter. This will have the effect of making the superior Courts more cautious, and of introducing something like a system for the other Courts, the want of which is now very much felt." Again, he says, "Hitherto it has not been much the custom to refer to precedent; and for aught the Judges of the Court may know, the same points may have been decided over and over again, and perhaps not always the same way. It is obvious, that having something like a system established would tend to abridge the labours of the Civil Courts."[1]

In no instance is the maxim "*stare decisis*" so imperative or so peculiarly adapted to the circumstance as when applied to the laws administered in India, since the practice of the Courts is unsettled, and not easily to be ascertained, and in some instances their jurisdiction is ill-defined, and encompassed with doubt and difficulty: whilst in questions of Native, and especially of Hindú law, a reference to the law officers is generally unsatisfactory. In speaking of such references, Sir William Jones observed—"I could not with any conscience concur in a decision merely on the written opinion of native lawyers, in any cause in which they could have the remotest interest in misleading the Court; nor, how vigilant soever we

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[1] Selections from the Records of the East-India House, Vol. II. p. 20.

might be, would it be very difficult for them to mislead us; for a single obscure text, explained by themselves, might be quoted as express authority, though perhaps in the very book from which it was selected it might be differently explained or introduced only for the purpose of being exploded."[1] And again, Sir Francis Macnaghten says, alluding to the Pandits, "Native lawyers may not be deserving of the blame which is imputed to them; but there are instances of their partiality and tersgiversation, which cannot be palliated or denied. Nothing but an ascertainment of the law can prove a corrective of this evil."[2] There can be no doubt but that the native law-officers, as a body, are both learned and respectable, and far above suspicion of corruption; but a mere knowledge of texts, however extensive such knowledge may be, is most often quite insufficient for the purpose of arriving at a conclusion; and it is perhaps too much to expect from an Indian education, that the law-officers should possess and exercise the discrimination and impartiality which belong more nearly to the province of a Judge. "The interminable and troubled sea of Hindú jurisprudence," says an accomplished author, "is sure to present something for the support of any opinion which it may be desirous to keep afloat for the purpose of temporary convenience"[3]—and thus the ignorance or partiality of the law-officers may always be supported, and seemingly justified, by quotations from the commentators, which, taken separately, are perhaps diametrically opposed to the actual true state of the law, only to be ascertained by fuller investigation and a comparison of all the conflicting authorities. The last-mentioned writer gives it as his deliberate opinion that "the

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[1] Letter from Sir W. Jones, dated March 19th, 1788. Sir W. Jones' Works, Vol. III. p. 74.* 4to. Lond. 1799.

[2] Sir Francis Macnaghten's Considerations on the Hindú Law, Pref. p. xi.

[3] Sir W. Macnaghten's Principles and Precedents of Moohummudan Law, Pref. p. xx. note.

speculations of commentators have done much to unsettle the Hindu law; and the venality of the Pundits has done more." And again, "to the Pundits is chiefly attributable the perplexity of the system which it is their province to expound."[1]

These inconveniences of a reference to the native law-officers can only be obviated by the publication of Reports of Decisions, which would frequently supersede, and generally controul, such a reference; since in all cases where a point of native law has been already determined by men who have made the study of that law the work of their lives, and who have brought to the task the advantages of a liberal education, such determination would at once present itself, and be sufficient to fix the vacillating mind of a doubting Judge; whilst the native law-officers would hesitate before they advanced opinions, or quoted authorities, at variance with the principles laid down by European Judges of established reputation as native lawyers. No one will for a moment dispute, that in any question of Hindú law the word of the illustrious Henry Colebrooke is worth the exposition of a thousand Pandits.

The practice of abiding by precedent is perfectly recognised both by the Hindú and the Muhammadan laws. The text of Manu—"If it be asked, how the law shall be ascertained, when particular cases are not comprised under any of the general rules, the answer is this: That which well instructed Brahmans propound shall be held incontestable law"[2]—is, to the Hindú divine authority for deferring to precedent; and it is perhaps solely on account of the metaphysical tendency of the Indian mind, which has always interfered with the mere practical record of mundane matters, that we do not possess collections of decisions by the more ancient lawyers, which

[1] Sir W. Macnaghten's Principles and Precedents of Hindú Law, Vol. I. Pref. pp. iv, v.

[2] Manu, Book xii. v. 108.

would have been in most cases as conclusive, as they would be desirable in all. With regard to the Muhammadan law, one of its chief foundations, the Sunnah and Hadís, may be looked upon as one great body of precedent, a large portion consisting of decisions passed by the Prophet on questions relating to the religion and law which he promulgated. In addition to this, the numerous collections of the Fatwas of celebrated lawyers form a mass of precedent hardly surpassed, in bulk at least, in the legal literature of any nation, and constantly referred to as authoritative in all Muhammadan Courts of Justice.

The publication of reports of cases other than those involving questions of native law, is also of the utmost importance for the guidance both of the Courts themselves, and of the legal practitioners. Mr. Macpherson, in his admirable treatise on the procedure of the Civil Courts in the Presidency of Fort William already mentioned, observes—"The practice and doctrines of the Civil Courts must be deduced, in great measure, from an examination of the decisions at large, both those which have been specially adopted and published as precedents, and those which are issued monthly as a record of the ordinary transactions of the Sudder Court;[1] for all decisions practically tend to shew by what principles the Court is governed; and they become law, that is to say, they guide men in their private transactions, and they regulate the decisions of the Courts. No one can make the examination to which I have referred, without perceiving that there is a large body of living doctrine, which appears to mature itself by degrees in the minds of experienced judicial officers, but which is not to be met with in any definite form. Yet by this test the judgments of the inferior Courts are necessarily tried, and no small portion of them are quashed for erroneous procedure; frequently with great severity of comment upon the part of the highest tribunal."

[1] These monthly collections of Decisions will be presently noticed.

Under all these circumstances, I think that I cannot better conclude this treatise than by directing the attention of the reader to such collections of reports as have hitherto been completed and published, and to those which are still appearing periodically.

The published collections of reports of Indian Decisions are not very numerous, but they already exist in sufficient numbers to be of the greatest practical utility, and additions are being made to them day by day.

The decisions of Her Majesty in Council on Appeal from India, were originally inserted in their places in the reports of Knapp and Moore: they are now published separately by the latter gentleman, under the title of "Indian Cases," and appear at intervals. There is also a valuable collection of the printed cases in Indian Appeals, with the judgments annexed, prepared and arranged by Mr. Lawford, but this collection was never published.

I inserted in the Appendix to my digest of Indian Cases,[1] a work to which I shall presently recur, a valuable series of notes of cases decided in the Supreme Court at Calcutta, by the late Sir Edward Hyde East, Baronet, formerly Chief Justice of the Court. These notes were originally placed at my disposal in MS. by the late very learned Judge, and on his death his son, the present Baronet, Sir James East, M.P. kindly permitted me to print them *in extenso*. They will be found to contain many most important decisions on points of Native Law, and questions relating to the jurisdiction of the Court.

Reports of cases were inserted by way of illustration, by Sir Francis Macnaghten, formerly a Judge of the Supreme Court at Calcutta, in his Considerations on the Hindú Law as current in Bengal, published in the year 1824, a work which I have already described. These Reports, from the nature of the work from which they are extracted, are of course confined to cases involving questions of Hindú law.

[1] Morley's Digest, Vol. II. pp. 1—243.

Notes of cases will be found in Mr. Longueville Clarke's editions of the Rules and Orders of the Supreme Court at Calcutta, published in 1829; of the additional Rules and Orders which appeared in the same year; and of the Rules and Orders for 1831-32, published in 1834. These notes of cases are very valuable, many of those in the two latter collections containing the judgments in full, and relating to points of native law of the greatest interest.

Reports of cases determined in the Supreme Court at Calcutta, were published by Mr. Bignell, in 1831. A single number only of these Reports appeared. The cases are fully and ably reported.

Notes of cases were inserted by Mr. Smoult in his Collection of Orders on the Plea Side of the Supreme Court at Calcutta, from 1774 to 1813 inclusive, published in 1834. These notes are succinct, but highly useful, and comprise decisions, principally on points of practice, from the year 1774 to 1798.

A Collection of decisions of the Supreme Court at Calcutta, was published by Mr. Morton in 1841. This Collection is principally compiled from the MS. notes of Sir R. Chambers, C.J., Mr. Justice Hyde,[1] and other Judges of the Court; and the cases relate almost exclusively to questions altogether peculiar to India. It is needless to add that it is a work of the greatest utility and authority.[2]

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[1] These MS. notes of Sir R. Chambers and Mr. Justice Hyde, which were also liberally made use of in Mr. Smoult's collection, comprise decisions of the Supreme Court at Calcutta from the year 1774 to 1798. The volumes in which they are contained were presented by Lady Chambers, the widow of Sir Robert, to the Supreme Court at Calcutta.—See Smoult and Ryan's Rules and Orders, Vol. I., Pref. p. xxvii.

[2] A new edition of Morton's Decisions, edited by Mr. Montriou, is in course of publication at Calcutta. It is stated in the advertisement that the original plan of the work is considerably enlarged in the new edition, by the addition of notes to each head or title; also of such decisions and alterations in the law and practice as are necessary to render the book a useful and complete epitome of the law embraced by the judgments reported, and a safe guide to the practitioner. I have not yet seen this new edition of Morton's Decisions.

Mr. Fulton published a single volume of reports in the year 1845. This volume comprises cases decided in the Supreme Court at Calcutta, between the years 1842 and 1844. Mr. Fulton has since returned to England, and I am not aware that his work was ever continued.

The example set by Mr. Morton and Mr. Fulton in publishing the decisions of the Supreme Court at Calcutta, has been worthily followed by other Barristers of the Court. Mr. Montriou, in 1850, published a volume of Reports comprising the decisions of the year 1846; in the following year Mr. Taylor continued these Reports to the end of the year 1848; and the latter gentleman, in conjunction with Mr. Bell, published the subsequent cases. Of this last collection I have not received any parts for a considerable period, but I believe that it is still in progress.

The only collection of the decisions of the Supreme Court at Madras is that published by Sir Thomas Strange, C.J. This work appeared in the year 1816, and comprises three volumes. The cases are clearly set forth, and the judgments frequently given entire; but, from the paucity of the materials placed at the disposition of the learned Judges at that period, the decisions of the Court, where they relate to questions of native law, must be taken with some reservation.

A valuable collection of the decisions of the Supreme Court at Bombay, will be found in the Appendix to my Digest of Indian Cases,[1] for these decisions I am indebted to the kindness of Sir Erskine Perry, formerly Chief Justice of that Court. They gain additional authority from the fact of the MS. having been carefully revised and corrected by the very learned Chief Justice himself.

Sir Erskine Perry has published, since his return to England, a collection of cases "illustrative of Oriental life, and the application of English law to India," decided by the Supreme Court at Bombay. This volume appeared in 1853.

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[1] Morley's Digest, Vol. II. pp. 247—452.

The first printed Reports of cases decided in the Courts of the Honourable East-India Company were published by Sir William Hay Macnaghten, when Register of the Sudder Dewanny Adawlut at Calcutta, in which Court the cases were determined. A second edition of the first two volumes appeared in the year 1827, and the Reports were subsequently continued in the same form. Those contained in the first volume were chiefly prepared by Mr. Dorin, afterwards a Judge of the Court. The notes appended to the cases in this first volume are entitled to weight, as having been written or approved by the Judges by whom the cases were decided; and those explanatory of intricate points of Hindú law are most especially valuable, as coming from the pen of the learned Henry Colebrooke. The second, third, and part of the fourth volumes, were also published by Sir William Macnaghten: the later cases in the fourth volume, were selected and prepared by Mr. C. Udney, his successor in the office of Register. The cases contained in volume the fifth were reported by Mr. J. Sutherland: those given in the sixth and seventh volumes have no reporter's name affixed, but they were approved by the Court, and were, as I believe, prepared by the Registers.

Since the end of the year 1844, these Reports, which were latterly called "Select Reports," published "as approved by the Court," are "but a re-print, accompanied by notes, of such of the decisions, published monthly, as, containing constructions of law, or being illustrative of points of practice, are adapted to serve as precedents to the Lower Courts."[1] It was subsequently determined by a resolution of the Court, dated the 27th April 1849, that the publication of the Select Cases should be discontinued. The mere re-print of a selection from the monthly publications of decisions was perhaps unnecessary, as the object of pointing out the "leading cases," might have been more readily accomplished by the addition of a tabular reference and explanatory notes, sanctioned by

[1] Advertisement to S. D. A. Rep. Vol. VII. Pt. 5.

the Court, and appended to the monthly issue. This, however, has not been done, and it cannot be denied that much inconvenience has arisen from the discontinuance of the Select Reports.

Reports of summary cases determined in the Sudder Dewanny Adawlut at Calcutta from the years 1841 to 1846 were appended to the seventh volume of the above-mentioned collection. In the year 1845 a selection of Reports of summary cases was published separately, containing selected decisions from the year 1834 to 1841, the former year being the period at which the summary and miscellaneous department of the business of the Court was first intrusted to one Judge. These were continued to the end of 1848, and were published as the first volume of Reports of Summary Cases. In the resolution of the Court, dated the 27th April 1849, to which I have already referred, it is stated, with regard to the Reports of Summary Cases, that "the Court are of opinion that their publication may go on, not as 'approved by the Court,' but with the sanction only of the Judge in charge of the Miscellaneous Department, whose decisions they are, and who will note such of them as he may think useful for publication."

An Index to the whole seven volumes of the Select Reports of Regular Cases, and to the first volume of the Select Reports of Summary Cases, was published in 1849.

A reprint of the Reports of Summary Cases determined in the Sudder Dewanny Adawlut of Calcutta, comprising reports from 1834 to 1852, was prepared by Mr. Carrau, and published at Calcutta in 1853. This work is stated to be published by authority, and under the revision of the Judges.

Another edition of the summary decisions of the Sudder Dewanny Adawlut of Bengal from 1834 to 1855, alphabetically arranged, was published at Calcutta, in the latter year.

Reports of cases, chiefly in summary appeals decided in the Sudder Dewanny Adawlut at Calcutta, were published by Mr. Sevestre, one of the Pleaders of the Court. Volume the first of this collection comprises three parts, and was completed in

the year 1842. These reports, which are exceedingly useful, are still in progress.

The decisions of the Sudder Dewanny Adawlut at Calcutta, recorded in English, in conformity to Act XII. of 1843, are now published monthly. This collection was commenced in the year 1845, by order of the Right Honourable the Governor of Bengal, and is still in progress, the decisions of each year forming a separate volume.

In the volume for 1850 marginal abstracts of the decisions reported were for the first time added.

The decisions of the Sudder Courts at Agra and Madras, recorded in English under the above-mentioned Act, the publication of which commenced respectively in 1846 and 1849, appear monthly.

The former Reports of cases determined in the Sudder Courts principally relate to constructions of the written law, touching only occasionally on points of procedure and practice; so that the publication of the decisions recorded in English, including cases of every description, may be said to have opened an entirely new field for the investigation of the student.

These monthly collections are, without question, of the highest value; and, as they are published simultaneously at Calcutta, Agra, and Madras, we are enabled to form a comparison between the practice of the several Courts of last resort, which cannot fail to be of the utmost utility in furthering the attainment of uniformity of procedure throughout the Courts in India. Unfortunately, however, the decisions in these Collections are not easily referred to: the Indices which are appended are insufficient, and the mode in which the cases themselves are reported is often such as to render it difficult to seize their full bearing. It is also much to be regretted that the plan of adding marginal notes to these collections has been so long delayed, and is not even now generally followed. No one who has not examined them with attention can form an idea of the labour requisite to master the contents of a single volume. The propriety of the object of their publication, viz.

"to give all possible publicity to the decisions of the Sudder Courts," is unquestionable; but it may be doubted whether the requisite publicity might not have been better attained by adopting a somewhat modified form. I would particularly refer to the frequent and needless repetition of similar cases and decisions. This repetition is especially conspicuous with regard to cases involving points of practice, reports constantly recurring in which precisely similar circumstances present themselves, and the erroneous decisions of the lower Courts, passed on the same points, are reversed, or the suits remanded on appeal, on identical grounds.[1]

Mr. Macpherson expresses a fear that these monthly collections of decisions "are but partially known, even to the Judges and practitioners of the subordinate Courts;" and, after an attentive perusal of them, I must add, that I think his fears are but too well founded. The Judges of the Sudder Courts in the several Presidencies are, no doubt, well acquainted with the decisions both of their predecessors and contemporaries, and the practice of the Courts has become familiar to them from long experience; but this is not always the case with the subordinate judicial officers, to whom it is of the greatest moment that they should have the means of acquiring the requisite knowledge for their guidance with the least possible amount of labour and expenditure of time. Does the present system of publishing the decisions afford such means? I apprehend that no one will answer in the affirmative. The judgments themselves, it is, true, shew, on the face of them, that they are the result of patient investigation and deliberate weighing of the facts, and in numberless instances they are remarkable for their lucidity and precision. It will, however,

[1] As an example of this useless repetition, the reader may refer to the case of *Nowell* v. *Becher*, S. D. A. Decis. Beng. 1845, p. 322. The case itself occupies three pages, whilst the record of other appeals on the petitions of the same party, containing the same statements repeated *verbatim*, and referring to the first report for the opinion of the Court, fills no less than eighty-three pages.

be obvious to every one accustomed to the use, and consequently appreciating the value, of full and explicit reports of the leading cases decided in the superior Courts of Justice, that the meagre record of judgments, however valuable in themselves, without discrimination or comment, regardless of repetition, difficult of reference, and mixing up the most trivial with those of the last importance, can afford but slight instruction to the profession at large.

I think that the simplest and most efficacious remedy for the defects attending the present system of reporting, would be to revive the publication of the Select reports, "by authority." Let *every* decision of *every* Court be published, as at present—it will be useful if only as a check to the subordinate Judges—but let Select reports be also published, for though they may be "mere reprints," the cases comprised in them will be those which are of the greatest consequence, which have the greatest weight as precedents, being selected and approved by the Court, and those to which the whole legal profession should have the readiest means of access.

The decisions of the Zillah Courts of the Lower Provinces, recorded in English, according to Act XII. of 1843, are printed monthly, in the same form as the preceding collections. The decisions of the Zillah Courts in the North-Western Provinces, are also published in a similar way and form; they were commenced in January 1848. The decisions of the Zillah, subordinate, and assistant Courts of the Madras Presidency, are also now published monthly; they begin with the cases for the year 1851. All these collections of decisions of the Zillah Courts are comparatively unimportant, since they are never referred to in the superior Courts as precedents.

The Reports of cases decided in the Courts of the East-India Company at Madras, with the exception of the monthly collections already mentioned, are few in number. A volume was published in 1843, entitled, Decrees in Appeal Suits determined in the Court of Sudder Adawlut, Vol. I., containing select decrees from 1805 to 1826 inclusive. The cases in this

collection which involve questions of Hindú law are interesting, as illustrative of the prevailing doctrines of the southern schools. These decrees are, however, obscurely reported, and, in some instances, they contain no point of law whatever, being merely decisions for want of proof.

A collection of Decrees in appeal suits determined in the Sudder Adawlut at Madras, from No. 11 of 1826 to No. 24, of 1847, was published at Madras in 1853.

The first collection of the decisions of the Sudder Dewanny Adawlut at Bombay, is the well-known series of Reports by Mr. Borradaile, formerly one of the Judges of the Court, and the author of the translation of the Mayúkha already mentioned. Mr. Borradaile's work is in two folio volumes, and was published at Bombay in the year 1825. It is replete with cases on points of law peculiar to the Bombay side of India, which are very ably reported.

A small but useful publication, appeared in 1843, entitled, Reports of Selected Cases determined in the Sudder Dewanny Adawlut at Bombay. The Reports contained in this little volume were prepared, with few exceptions, by the Deputy Registers of the Court, and are arranged according to the dates of the decisions, which are scattered over a period of twenty years, from 1820 to 1840, the later ones having been noted by the Judges who sat, as proper subjects for publication.

In 1850, Mr. Bellasis, late Deputy-Registrar to the Sudder Dewanny Adawlut at Bombay, published a small volume containing decisions of that Court from the year 1840 to 1848, and intended as a continuation of the Reports of Selected Cases. Mr. Bellasis states that "the cases reported are for the most part the decisions of a full Court of three Judges, such being considered more authoritative as precedents." A few reports in this collection were prepared by the late Mr. Babington while he held the appointment of Deputy-Registrar to the Sudder Court.

Mr. Morris, in 1855, commenced the publication of reports of cases disposed of by the Sudder Dewanny Adawlut of

Bombay; the first volume contains the whole of the decisions for the year 1854; the subsequent volumes each comprise the decisions of a year.

In the branch of Criminal Judicature few Reports have been printed.

The first collection that appeared was of the sentences of the Nizamut Adawlut at Calcutta. The first two volumes were prepared by Sir William Macnaghten; the subsequent volumes have no reporter's name. This collection is I believe still in progress.

In January 1851 a monthly series of the decisions of the Nizamut Adawlut at Calcutta was commenced, and still appears in a regular series.

At Madras a similar issue of reports of criminal cases determined in the Sudder Foujdary Adawlut began in the same year: marginal abstracts are added in this series.

A valuable collection of reports of cases determined in the Sudder Foujdary Adawlut at Bombay, compiled by Mr. Bellasis, and comprising decisions from 1827 to 1846, appeared in the year 1849. The cases recorded in this collection have been selected to illustrate the application of the Bombay Criminal Code, both in questions of evidence and of punishment, and also to settle doubtful points of procedure and practice. The reporter has prefixed to his work a succinct account of the various changes the constitution of the Sudder Foujdary Adawlut has undergone since its first institution.

In the year 1852 the publication of the decisions of the Nizamut Adawlut of the North-Western Provinces was begun, commencing with the decisions of the year 1851.

Mr. Morris in the year 1855 published a collection of reports of cases disposed of by the Sudder Foujdary Adawlut of Bombay, the cases commencing with those of 1854. Two volumes are published every year, each containing the decisions of six months.

The above account of the reports comprises, as I believe, all those that have been published. It remains to say a few

words respecting a work of my own which is intimately connected with the subject.

Many years ago, when I first commenced the study of the Law of India, I soon discovered that the means of referring to the main sources from which fixed principles must be derived; viz. the decisions of competent courts, illustrating and interpreting the doctrines laid down in the text-books of the native laws and explaining the laws enacted by the Government of India, were but few and scanty: in fact a great part of the reported cases were almost inaccessible. I possessed a large, and, I believe, a perfect collection of the printed decisions of the various Courts, most of them rare and many of them scarcely procurable, as well as a number of notes of cases and judgments in MS., which I have mentioned in the above account of the reports, and, feeling sure that I could not employ my time more usefully, I, after much labour, prepared for the press an Analytical Digest of all the reported cases that had come into my hands. In the year 1850 I published the first two volumes of my Digest accompanying the text by copious notes referring to the original authorities and explanatory of doubtful points. The favourable reception of my work, both in this country and in India, induced me to continue it; and in the year 1852 I published the first volume of a "New Series," comprising the decisions of all the Courts to the end of 1850. I had intended to continue the issue of supplementary volumes periodically; but the reports of the Indian Law Commissioners, appointed in 1853 by virtue of the Statute 16th and 17th Vict. c. 95, which seemed to announce the total subversal of the pre-existing Judicial system of India, at least so far as the *practice* of the Courts was concerned, put a stop to my labours for the time. I trust to be able to continue them at some future period; or to publish a second edition of the entire Digest, continuing it to the time of publication, in the event of alterations being made in the constitution and practice of the Courts, and of the Laws generally, of so considerable a nature as to render it advisable

to remodel the whole work. Meanwhile as the Digest stands at present it comprises nearly 6000 decided points applicable to the actual state of the Law of India, and from the commendations that have been bestowed upon it, after a long trial of its merits, by those most qualified to form an opinion, I believe I may be justified in saying that it has not been found either incomplete, ill-arranged, or insufficient.

POSTSCRIPT.

In the preceding pages I have, as I believe, recorded all the most important provisions of the enacted and published law of British India; but a treatise on the Administration of Justice in that country would not be complete without mention being made of a system which exists independently of such enacted and published law.

During the Government of the Marquis of Hastings, from 1813 to 1823 much new territory was acquired, and such new territory was specially exempted from the Regulation Law; several of our more recent acquisitions, of which the Punjáb is the most important, have been similarly exempted, and these are collectively called the Non-Regulation provinces. To these Non-Regulation provinces no regular enacted laws whatsoever have been applied: their existence is not even recognised by the law, and they are governed under such particular instructions as the executive government may issue to its officers, whether civil or military, to whom the administration of such provinces or districts has been committed. It is obviously impossible to give a detailed description of a system, if it deserve the name of system, in which the elements are so variable and fluctuating, and which differs in the several provinces according to existing local circumstances: a general account must therefore suffice. A principal feature of the system appears to be the union of the executive and judicial functions in one individual; the office of Judge being added to that of Magistrate and Collector. The instruction is that the spirit, but not the letter, of the Regulations is to be followed; and practically the general course followed is that, in criminal matters, the Regulations are pretty closely the rule. In the Civil Court, the Regulations are entirely dispensed with, and the Court is conducted on what are considered to be simple and natural principles, suited to the country; and in revenue matters special direc-

tions are received from Government. Natives are freely employed as Panchâyits, not independent of the Civil Court, but worked under its immediate supervision and control, in some respects like an English jury,[1] although they decide many issues of law, as well as of fact. The Judge is rather superintendent of the administration of justice than required to possess a technical knowledge of the law.

The foregoing slight description of the system for the Non-Regulation provinces has been almost entirely taken from Mr. Campbell's "Modern India," to which excellent work, I must refer the reader for further details.[2] It appears that the system has worked well as yet, and it has been warmly advocated by many of those who have taken part in it—Mr. Campbell amongst the rest; but it is scarcely necessary to point out to the lawyer, or indeed to any unprejudiced person, that the absence of enacted laws, and of fixed definite rules of procedure,[3] must, sooner or later, be productive of inextricable confusion. It does not admit of question that the formation of a Code of Laws should be approached cautiously, and not attempted until sufficient materials have been collected; and perhaps no better plan could have been devised with regard to the Non-Regulation provinces than to exempt them for the present from the Regulation law, and to direct the adminis-

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[1] This is however wholly in accordance with the Regulation Law: the employment of natives as Panchayits or jurors has not it seems been very successful in the Regulation provinces (see *infra* the Glossary, *sub voce* Panchâyit), whatever may be the case in the districts exempted from the operation of the Codes of Regulations.

[2] Modern India, by George Campbell, Esq. pp. 183, 233, 250, 545, *et seq.* 8vo. London, 1852.

[3] I must not be understood as saying that rules of procedure have been *entirely* neglected. Mr. Campbell mentions (Modern India, p. 546) a very brief and simple Code of Procedure, entitled, "Rules for the Administration of Civil Justice in the Punjab and Cis-Sutlej Province," which has been promulgated under the authority of the Governor General. I have not been able to meet with this work.

tration of justice by instructions from the Executive Government. With respect to the Punjáb, this exemption was especially advisable, since our knowledge of the laws and customs of the Sikhs was and is so limited, that the immediate introduction of the Bengal Code in that province would have been probably oppressive. But when the time comes, when our knowledge of the newly acquired provinces shall be sufficient, laws should and will be no doubt enacted, specially adapted to them; the Acts of the Governor-General in Council *in continuation* of the Regulation law, will form an additional Code of Law and Procedure which will suffice for the requirements of the Non-Regulation provinces, and the anomaly of certain districts being excepted from the operation of the general enacted law of India will cease to exist.

THE END.

GLOSSARY.

[This explanation of the native terms occurring in the preceding pages, is extracted almost verbatim from Professor Horace Hayman Wilson's admirable "Glossary of judicial and revenue terms, and of useful words occurring in official documents relating to the administration of the Government of British India," compiled and published under the authority of the Honourable Court of Directors of the East-India Company, 4to. London, 1855. I regret not having been able to adopt the learned Professor's method of transcribing native words, but the various types which he employed could not be procured by the publishers of my work without considerable delay.]

'Ámil, (Arabic) An officer of Government in the financial department, especially a collector of revenue on the part of the Government, or of the farmer of the revenue, also himself a farmer of, or contractor for, the revenue under the native system, and invested with supreme authority, both civil and military, in the districts which he farmed, as is still the case in several native states, especially Oude and Hyderabad. In the early settlement of Benares by the Government of Bengal the 'Ámil was intrusted with the joint power of Hákim or magistrate, and Tahsíldár or collector, and was responsible for the realization of a fixed amount of revenue, being precluded from levying any excess on the Government demand.

Adawlut, ('Adálat—Arabic) Court of justice; justice, equity. Under the Muhammadan Government the 'Adálats, or Courts of Justice, were four.

1. Nizámat 'Adálat, the Supreme Court of Criminal Justice, nominally presided over by the Názim, or Viceroy of the province. This was subdivided into the Roz-'adálat, or Court held on a Sunday by the Názim for the trial of capital offenders, and the 'Adálat ul 'Áliyat, the High Court, in which affrays, quarrels, and cases regarding personal property were tried: this was usually presided over by the Nizám's deputy, or Dáróghah.

2. Díwání 'Adálat, The Civil Court of the Díwán, the chief officer in charge of the revenue of the principality.

3. Faujdárí 'Adálat, The Court of the Faujdár, or chief of the magistracy and police of a district; the Subordinate, or District Criminal Court.

4. 'Adálat al-Kází, The Court of the Kází, the chief judge of a town or district in civil causes and questions regarding the Muhammadan religion. Under him the Muhtasib held a Court for the adjudication of offences against morals—as drunkenness, gambling, &c.

Ameen, (Amín—Arabic) A confidential agent, a trustee, a commissioner; applied in Upper India especially to a native officer of Government, employed either in the revenue department to take charge of an estate and collect the

revenues on account of Government, or to investigate and report their amount; or in the judicial department, as a judge and arbitrator in civil causes.

DARBÁR, (Persian) A court, a royal court, an audience or levee.

DEWAN, (Díwán—Persian) A royal court, a council of state, a tribunal of revenue or justice. A minister, a chief officer of state. Under the Muhammadan government it was especially applied to the head financial minister, whether of the state or of a province, being charged, in the latter, with the collection of the revenue, the remittance of it to the imperial treasury, and invested with extensive judicial powers in all civil and financial causes. Under the Maratha government the Díwán was the chief minister after the Pradhán. The title also denoted the head officer of any revenue or financial department, as the Díwán of the mint, of the jewel office, and the like; in which sense it is retained under the British government, as the Díwán of the mint, of the bank, of the salt-agency, and, formerly, of a collectorate, and is even applied to the managers of Zamíndáris for native proprietors, and to native servants intrusted with the management of the financial interests of a house of business, or of any responsible individual. The title of Díwán, or office of Díwáni, equivalent to the right of collecting the whole revenues of Bengal, Bahar, and Orissa, was conferred upon the East-India Company by the nominal emperor of Hindustan, Sháh 'Álam, in 1765.

DEWANNY, (Díwáni—Persian) adj. Of or relating to a Díwán, civil, as opposed to criminal. subst. The office, jurisdiction, emoluments, &c., of a Díwán. The right to receive the collections of Bengal, Bahar, and Orissa, conferred on the East-India Company by the titular Moghul. It is used also in the early reports for the territory of which the revenue was receivable under the grant in Bengal.

DEWANNY-ADAWLUT, (Díwáni 'Adálat—Persian) see Adawlut.

DÍYAT, (Arabic) The price of blood, a tax imposed for any act of offence against the person: in cases of homicide, payable to the relatives of the deceased.

FATWA, (Arabic) A judicial sentence, a judgment; but more usually applied to the written opinion of the Muhammadan law officer of a court.

FIRMAN, (Farmán—Persian) A mandate, an order, a command, a patent.

FOUJDÁR, (Faujdár—Persian) An officer of the Moghul government, who was invested with the charge of the police, and jurisdiction in all criminal matters. A criminal judge, a magistrate. The chief of a body of troops.

FOUJDARY, (Faujdárí — Persian) subst. The office of a magistrate or head of police, or criminal judge. adj., Relating to the office of Faujdár; criminal, as opposed to civil; levied as a tax for the support of the police, &c.

FOUJDARY ADAWLUT, (Faujdárí 'Adálat—Persian) see Adawlut. The chief Criminal Court in the Madras presidency. By Act VIII. of 1842, all the Courts of the highest jurisdiction were directed to be called "Sudder Courts."

JÁGÍR, (Persian) A tenure common under the Muhammadan government, in which the public revenues of a given tract of land were made over to a servant of the state, together with the powers requisite to enable him to collect and appropriate such revenue, and administer the general government of the district. The assignment was either conditional or unconditional; in the former case, some

public service, as the levy and maintenance of troops, or other specified duty, was engaged for: the latter was left to the entire disposal of the grantee. The assignment was either for a stated term, or, more usually, for the lifetime of the holder, lapsing, on his death, to the state, although not unusually renewed to his heir, on payment of a Nazaránah, or fine, and sometimes specified to be a hereditary assignment; without which specification it was held to be a life-tenure only. A Jágír was also liable to forfeiture on failure of performance of the conditions on which it was granted, or on the holder's incurring the displeasure of the emperor. On the other hand, in the inability of the state to vindicate its rights, a Jágír was sometimes converted into a perpetual and transferable estate; and the same consequence has resulted from the recognition of sundry Jágírs as hereditary by the British government after the extinction of the native governments by which they were originally granted; so that they have now come to be considered as family properties, of which the holders could not be rightfully dispossessed, and to which their legal heirs succeed, as a matter of course, without fine or Nazaránah, such having been silently dispensed with. This is particularly the case in the Maratha territories, in which, when first conquered, Jágír grants were found to be numerous, reducible to three classes—1. Those held by descendants of the original ministers of the Rájás, as the Pratinidhi and the Pradháns, prior to the usurpation of the Peshwa, but continued, in some instances, under his rule; 2. Those held by military chiefs, on condition of service, some of whom have held their fiefs from the time of the Muhammadan monarchies; and 3. Those held under grants from the Peshwas, generally Brahmans or Marathas of low family: they were all allowed to retain their lands on the principle of securing their services on a moderate scale, preserving the sovereignty of the British government entire, and interference with the chiefs on extraordinary occasions only. With regard to the Jágír in general, the especial object and character of the grant was commonly specified by the designation attached to it. The term is also in use, although with some license, to designate temporary grants, allowances, or stipends, from the government to individuals.

JAMADÁR, (Jama'dár—Persian) The chief or leader of any number of persons; in military language, a native subaltern officer, second to the Súbahdár; an officer of police, customs, or excise, second to the Dáróghah; a head domestic servant, a sort of major-domo, but unconnected with the table department: among the Marathas, an officer appointed to protect the crops from the depredations of an army and its followers.

KAMAVÍSDAR, (Kamávísdár—Marathí) The head revenue-officer of a district, entrusted also with the police. In Kanara the Kamáïshidár, or Kamávísi-dár was also especially the collector, managing lands that were permanently or temporarily occupied by the state, the Amín of the upper provinces.

KAVILGAR, (Kávalkár—Tamil) A protector, a guardian, a watchman; the village watchman, who also commonly acts as a messenger and guide for travellers.

KÁZÍ, (Arabic) A Muhammadan Judge, an officer formerly appointed by the government to administer both civil and criminal law, chiefly in towns, according to the principles of the Kurán: under the British authorities the judicial

functions of the Kázís in that capacity ceased, and, with the exception of their employment as the legal advisers of the courts in cases of Muhammadan law, the duties of those stationed in the cities or districts were confined to the preparation and attestation of deeds of conveyance and other legal instruments, and the general superintendence and legalization of the ceremonies of marriage, funerals, and other domestic occurrences among the Muhammadans.

KÁZÍ AL-KUZÁT, (Arabic) The principal Kází under the British government, the head Muhammadan legal officer of the Sadr 'Adálats, or chief Courts of appeal.

KUTWÁL, (Persian) The chief officer of Police for a city or town, a superintendent of the markets.

LÁKHIRÁJ, (Arabic) Rent-free land, applied to land exempted for some particular reason from paying any part of the produce to the state.

MAHÁLKARÍ, (Marathí) A revenue and police officer in charge of a district: in the former department he was usually subordinate to the Kamávísdár; in the latter he was accountable to the government direct, or to its representative in the district.

MÁL, (Arabic) Wealth, goods, effects, property of any description: in Muhammadan law it is sometimes used for personal as opposed to real property, or for money as distinguished from goods and chattels: in India it was used for the public revenue from any source whatever, but more especially for that derived from land, to which sense, as a fiscal term, it is now restricted, or the revenue claimed by the government from the produce of cultivated land, the wealth of the state.

MASNAD, (Arabic) A throne; a large cushion on which they recline.

MOFUSSIL, (Mufassal—Arabic) Property separate, distinct, particular: in Hindústán, a subordinate or separate district; the country, the provinces, or the stations in the country, as opposed to the Sudder (Sadr), or principal station or town: any other place than the ordinary place of office or residence; as a Dárógháh, leaving a police station to go to a village in his jurisdiction, is said to have gone to the Mufassal, and the same is said of a villager who has gone from his cottage into the fields: its most usual application in Bengal, however, is to the country in general, as distinct from Calcutta.

MOONSIFF, (Munsif—Arabic) Equitable, just: a decider of what is just, an arbitrator, a judge: applied under the British government, to a native civil judge of the first or lowest rank.

MUFTÍ, (Arabic) A Muhammadan law-officer, whose duty it was to expound the law which the Kází was to execute: the latter, in British India, usually discharges the duties of the Muftí also.

NÁIB-I NÁZIM, (Persian) A deputy-governor and administrator of justice: an officer nominally under the Nawáb of Bengal, but appointed by the British authority to superintend the administration of criminal justice. The office was abolished in 1790.

NAWÁB, (Arabic) A viceroy or governor of a province under the Moghul government, whence it became a mere title of any man of high rank, upon whom it was conferred without any office being attached to it.

NIZAMUT (Nizámat—Arabic) The office of the Nizám, the administration of police and criminal law: as a financial designation it was applied, under the Muhammadan government, to lands paying revenue to the Názim, not to the Díwán, or financial minister of a province, termed also Nizámat Maháll.

NIZAMUT ADAWLUT, (Nizámat 'Adálat—Arabic) The chief criminal Court, or Court of the Nizám, applied at present to the chief criminal Courts of the British provinces.

PANCHÁYIT, (Panchát — Hindustání) A native court of arbitration, consisting of five or more members chosen by the parties themselves, or appointed by the civil officers of the government, for the determination of petty disputes among the people, especially in matters affecting the usages of cast or occupation: (however prized by the natives when other means of obtaining justice were unavailable, and when Panch-parameswara, the Pancha is the supreme deity, was a proverbial phrase in the south of India at least, there are now few occasions in which this sort of assembly is spontaneously had recourse to, or in which its judgments are regarded as decisive, and this notwithstanding great pains have been taken by the British government to render it effective).

PANDIT, (Pandita—Sanskrit) A learned Brahman, one who makes some branch of Sanskrit learning his especial study, and teaches it.

PATÉL, (Hindustání, Pátél, Mar.) The head man of a village, who has the general control and management of the village affairs, is head of the police, and exercises, to a limited extent, the functions of a magistrate; he is also the principal agent in the realization of the revenue, and the chief medium of communication with the officers of government: in the Maratha countries the office is frequently held under a government grant, in many instances that of the government of Dihlí, and has certain emoluments and privileges attached to it: it is hereditary and saleable with the consent of government, and the actual occupant may admit a partner: the term is principally current in the countries inhabited by, or subject to the Marathas, and appears to be an essential Marathí word, being used as a respectful title in addressing one of that nation, or a Súdra in general.

PEON, (?) The term commonly used by Europeans for the Persian word Piyádah, a foot-man, a foot-soldier, an inferior officer of police or customs, or of courts of justice, usually wearing a badge, and armed with a lance or sword and shield: in some places the term denotes a kind of local militia holding lands on condition of police or military service: it is also commonly, though laxly, used as a synonym of Harkárah, to denote a running footman, a courier, a messenger.

PERGUNNAH, (Parganah—Persian) A district, a province, a tract of country comprising many villages, but of which several go to constitute a Chakla or Zillah (Zila'): the actual extent varies, but the distinction is permanent.

PESHKAR, (Péshkár—Persian) An agent, a deputy, a manager in general for a superior or proprietor, or one exercising in revenue or custom affairs a delegated authority: in Bengal the native officer in a Judge's or Collector's office, next in rank to the Sirishtahdár or head native officer in such office, who has the general superintendence of the establishment and charge of the public records and official documents and papers.

POLIGAR, (Páligára—Mar.) A petty chieftain: in the south of India, especially in Karnáta, the Poligar, or Polygar, of early writers, occupying chiefly tracts of hill and forest, subject to pay tribute and service to the paramount state, but seldom paying either, and more or less independent, subsist-

ing in a great measure by plunder: on the subjugation of the country most of the Poligars were dispossessed, some were pensioned, and a few were allowed to retain some of their villages at a quit-rent; these have now subsided into peaceable land-holders.

PRINCIPAL SUDDER AMEEN, see Sudder Ameen.

RAJAH, (Rájá—Sanskrit) A king, a prince, a title given by the native governments, and in later times by the British government, to Hindús of rank: it is also assumed by petty chiefs in various parts of Hindústán, and is not uncommonly borne by Zamíndárs.

SÁLISÁN, (Persian plural of the Arabic Sális, a third or one of three) Umpires, arbitrators.

SÚBAHDÁR, (Persian) The governor of a Súbah or province, a viceroy under the Moghul government: a native military officer.

SÚBAHDÁRÍ, (Persian) The office of governor or viceroy.

SUDDER AMEEN, (Sadr Amín—Arabic) A chief commissioner or arbitrator, the title of a class of native civil judges under the British government, distinguished as Sadr Amíns and Principal Sadr Amíns: these are the second and third in rank, counting from the first or lowest, viz. the Munsifs.

SUDDÁR ADAWLUT, (Sadr 'Adálat—Arabic) The chief court of civil justice, the Company's chief court and court of final appeal in India in the Madras presidency.

SUDDER DEWANNY ADAWLUT, (Sadr Díwání 'Adálat—Persian) The chief Court of civil judicature, the Company's chief courts, and courts of final appeal in India, in the Presidencies of Bengal and Bombay.

SUDDER FOUJDARY ADAWLUT, (Sadr Faujdárí 'Adálat—Persian) The chief criminal Courts of the Company's government in the Presidencies of Madras and Bombay.

SUDDER NIZAMAT ADAWLUT, (Sadr Nizámat 'Adálat—Arabic) The chief criminal Court of the Company's government in the Presidency of Bengal.

TALLIAR, (Talayári — Malayálam) A head-man, a chief.

TALOOKDÁR, (Ta'allukdár—Persian) A holder of a Talook (Ta'alluk): in some places a government officer; a collector of revenue from the cultivators, either on behalf of the state or of the farmer of the revenue, whose undue exaction it is his duty to prevent.

TALOOKDÁRÍ, (Ta'allukdárí — Persian) The tenure, office, or estate of a Ta'allukdár.

WATAN, (Arabic) Country, native country, place of residence, home: amongst the Marathas it has come to import any hereditary estate, office, privilege, property, or means of subsistence, a patrimony.

ZAMÍNDÁR, (Persian) An occupant of land, a land holder: the rights of the Zamíndár have been the subject of much controversy with reference to his character as hereditary owner of the land he occupies, or as the responsible collector only of the revenues on behalf of the Government. Under the Muhammadan administration the latter was the capacity in which the Zamíndár was ordinarily considered, and the chief authorities never hesitated to exercise the power, when they possessed it, of turning out a Zamíndár and placing another in the Zamíndárí, whence the one in possession was termed Sanadí or Ahkámí, the Zamíndár by patent or command. Whilst managing the lands and realizing the revenue the Zamíndár was allowed a fee or commission of ten per cent upon the total collections, and a portion of the land was exempted from the revenue assessment to the extent of five per cent. on the collections, under the

name of Nánkár, being intended for the personal support of the Zamíndár and his family: further deductions from the stipulated amount of revenue, termed Mathaut, were also allowed, to cover various charges borne by the Zamíndár: on the other hand, he was empowered to levy internal duties and customs on articles of trade passing through his district, and to impose petty taxes, or Abwábs, on the cultivators, in addition to the portion of the public revenue demandable from them individually: on his relinquishing the management of the Zamíndárí, or being removed from it without cause of grave offence, it was customary to assign him, as Málikánah, ten per cent. on the Sadr collections, or the same rate on the nett collections when held Khás, or managed by the government officers direct. But although in these respects the Zamíndár appears to be a representative of the State, employed to realize and transfer to the public treasure nine-tenths of the revenue, and to be nominated or removed at pleasure; yet the practice of hereditary succession, and the right to mortgage and sell, partook more of the tenure of ownership, and extensive tracts came to be held by successive generations of the same family, through more or less protracted periods, in some instances apparently from a date anterior to the fiscal regulations of the Muhammadan governments; in the decline of the latter, also, many Zamíndárís which were held originally under a special grant were converted into hereditary proprietaries, and the Zamíndárs, appropriating by fraud or force very extensive districts, assumed the state of chiefs and princes, and were sometimes powerful enough to resist the authority and withhold the revenues of the state. The question of right was, however, set at rest in Bengal, Bahar, and Orissa, in 1793, by the terms of the perpetual settlement, which recognized Zamíndárs and independent Ta'allukdárs as "actual proprietors," enjoying their estates in absolute ownership as long as they paid the government revenue, or nine-tenths of the fixed nett proceeds of the lands, and liable to dispossession in case of failure, by the sale of their lands at public auction. The same measure was subsequently adopted at Madras, and Zamíndárs were designated as proprietors of land, along with other classes with whose rights and recognition, as was afterwards explained, it was not intended to interfere.

ZAMÍNDÁRÍ, (Persian) The office and rights of a Zamíndár, the tenure of a Zamíndárí, the tract of land constituting the possessions of a Zamíndár.

ZILLAH, (Zila'—Arabic) Side, part, a division, a district: under the British administration, a province, a tract of country constituting the jurisdiction of a commissioner or circuit judge, and the extent of a chief collectorate.

END OF THE GLOSSARY.

Works by the same Author.

THE HISTORY of the ATABEKS of SYRIA and PERSIA, by Muhammed Ben Kháwendsháh Ben Mahmúd, commonly called Mírkhónd. Now first edited from the Collation of Sixteen MS. by W. H. Morley. To which is added a Series of the Coins struck by the Atábeks, arranged and described by W. S. W. Vaux, Esq. Royal 8vo. 7 plates. London, 1848. Printed for the Society for the publication of Oriental Texts.

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